TENTATIVE ORDER ORDER R8-2002-0012
(Formerly Order 01-16, NPDES CAS618036)
SAN BERNARDINO COUNTY
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT

Comment letters were received from the following:

I. First Draft – September 14, 2001
- **A. City of Ontario (September 19, 2001) – Comments 1 - 33**
- **B. City of Rancho Cucamonga (October 2, 2001) – Comments 34 - 71**
- **C. City of Fontana (September 24, 2001) – Comments 72 - 78**

II. Third Draft – January 9, 2002
- **A. City of Ontario (January 31, 2002) – Comments 79 - 88**
- **B. Burke, et al. for the City of Chino Hills (January 23, 2002) – Comments – 89 - 98**
- **C. Burke, et al. For the City of Chino Hills (January 17, 2002) – Comment 99**
- **D. Construction Industry Coalition on Water Quality (February 8, 2002) - Comments 100 - 114**
- **E. Manatt/Phelps/Philllips (February 7, 2002) – Comments 115 - 120**
- **F. Natural Resource Defense Council (NRDC) (February 8, 2002) – Comments 121 - 146**

III. Fourth Draft - February 13, 2002
- **A. NRDC (February 25, 2002) – Comments 147 - 155**
- **B. City of Ontario (March 12, 2002) – Comments 156-161**
- **C. Richards, et al for the Cities of Rancho Cucamonga and Upland (March 15, 2002) – Comments 162-163**
- **D. Rancho Cucamonga and Upland (March 15, 2002) Comments 164-182**
- **E. San Bernardino County Flood Control District (March 20, 2002) Comments 183-231**

I. RESPONSE TO COMMENTS ON THE FIRST DRAFT (SEPTEMBER 14, 2001)

(Most of the comments are verbatim from the comment letters)

A. RESPONSE TO CITY OF ONTARIO COMMENTS (SEPTEMBER 19, 2001):

1. **Comment:** A definition section is needed in the permit.

   Response: A definition section has been added as Appendix 4. Some of the definitions are included as footnotes.

2. **Comment:** Page 6, Item No. 17: Reach 3 of the Santa Ana River is not listed here, but is on the 303(d) list. A map showing the location and extent of each waterbody and the specific jurisdictions draining into these waterbodies must be included in the permit. The City also recommends attaching the TMDL schedule for the waterbodies impacted by the permit.

   Response: Reach 3 of the Santa Ana River starts from Mission Boulevard and ends at Prado Dam in Riverside County. Since this is outside the permitted area, it has been deleted from the 303(d) list for the San Bernardino County area. The requested map has been included as Attachment 1. The TMDL schedule and a list of jurisdictions draining into specific waterbodies have been included in the Fact Sheet (page 10).

3. **Comment:** Page 7, Item No. 21: It is not clear what the listed items are.

   Response: The items are now listed under Item No. 22 with an explanation.

4. **Comment:** Page 8, Item No. 23: Attachment 3 is a list of organizations that are not actively involved in the storm water program. The purpose of the reference to this attachment should be made clear.

   Response: Attachment 3 is a list of organizations that are not currently regulated under the areawide permit but whose activities may have an impact on discharges to the MS4 systems. The Regional Board expects the permittees and the listed entities to work together to control pollutants in storm water runoff. Some clarifications have been added to the text. Also see response to comment No. 34 from the City of Rancho Cucamonga.

5. **Comment:** Page 8, Item No. 24: The first reference to MSWMP needs to be defined. This paragraph is very confusing. The City recommends stating that the MSWMP is the ROWD and that the order requires that the permittees comply with the ROWD.

Response: The first reference to the MSWMP is actually at Item No. 21 (Item 22 in the March 22, 2002 draft) of the permit. Please note that the MSWMP is only a part of the ROWD. The language has been revised for clarification.

6. **Comment:** Page 12, Item No. 43: Reach 3 of the Santa Ana River is also impaired for pathogens. Change the sentence to, "These elevated levels may in part be attributed to discharges into MS4 systems." Elevated levels of pathogens come from specific sources such as sewers, dairies or animal waste, not from storm drains.

   Response: Reach 3 of the Santa Ana River is not part of the San Bernardino County MS4 permit. There could be several sources for the elevated pathogen levels. The Executive Officer issued a Water Code Section 13267 letter to the MS4 permittess discharging to the impaired portions of the Santa Ana River to investigate the sources of bacterial contamination in the River, including the contribution from urban runoff. This investigation is not complete and it is premature to draw any conclusions prior to completion of this investigation.

7. **Comment:** Page 13, Item No. 45: It is not clear why only "Non-Residential" construction projects are included here. Does this mean residential construction projects (1-5 acres) do not need to be regulated? Under WQMP requirements, Page 24, developments, which involve home subdivisions of 10 or more, are required to implement BMPS.

   Response: This is now Item 48 in the March 22, 2002 draft. The language has been revised. BMPs are needed for all construction projects.

8. **Comment:** Page 16, Section III, Item No. 2: Replace wording with, "The permittees shall prohibit storm water or non-storm water discharges into their storm water conveyance systems which could cause or contribute to a condition of contamination, nuisance or pollution in waters of the State as defined in Section 13050 of the Water Code". The City cannot completely control all discharges into or from its storm drain system and should, therefore, not be held responsible for all of the discharges into or from its storm drain system. The City should be required to develop programs and controls to prevent illegal discharges or spills which could cause contamination, nuisance or pollution, but cannot prevent these conditions in receiving waters unless a treatment plant is installed.

   Response: Please see the revised language. The revised language is consistent with State Board Orders No. 99-05 and 2001-15.

9. **Comment:** Page 16, Section III, Item No. 3: Replace wording with "The permittees shall implement programs to reduce pollutants to the maximum extent practicable and

require the implementation of programs by users of the storm drain system to reduce pollutants in storm water to the maximum extent practicable".

Response: This is now Item No. 3i in the March 22, 2002 draft. Please note that the language in the draft permit is consistent with State Board Order No. 99-05. (Also see response to Comment 8, above.)

10. **Comment:** Page 17, Section III, Item No. 4j: Define non-commercial vehicle washing. Does that mean car wash fundraisers are exempt? Recommend adding the following as an authorized non-storm water discharge: "r) Rinse waters using a garden hose to rinse the dust off of surfaces, provided that no detergents or other chemicals are used and provided that chemical spills, litter, sediment and debris are removed from these surfaces and disposed of properly, prior to rinsing."

Response: Non-commercial vehicle washing includes residential car washing and car washing operations conducted by non-profit organizations for fundraisers. Please note that this list is in accordance with 40 CFR 122.26 (d)(iv)(B)(1). Please note that the permittees may propose appropriate controls in their report to address pollutants in other types of discharges. Also see Section VI. of the Order.

11. **Comment:** Page 18, Section III, Item No. 8: Replace wording with "The permittees shall prohibit discharges into its storm water conveyance system that are prohibited by Chapter 5 of the Basin Plan".

Response: This is now Item 7 in the March 22, 2002 draft. The language in the current draft is consistent with State Board Order No. 2001-15.

12. **Comment:** Page 18, Section IV Item No. 1: Replace with: "Permittees shall prohibit the discharge of storm water or non-storm water into their MS4s that could cause an exceedance of receiving water quality standards (designated beneficial uses and water quality objectives) contained in the Basin Plan, and amendments thereto."

Response: Please see response to Items 8 and 11, above.

13. **Comment:** Page 19, Section VI, Item No. 4b: Replace with "Industrial wastewater or wash water resulting from hosing down or cleaning of fueling areas, material or chemical processing areas or vehicle service areas."

Response: Please note that some of the suggested additions are already included in other subsections of this section (see 5c. and 5f.).

14. **Comment:** Page 20, Section VI, Item No. 4e. Replace with "Discharges from cleaning, municipal, industrial, commercial, residential areas (including parking lots), streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc., using chemicals or detergents, without prior sweeping to remove litter, sediment and debris."

Response: Please note that the permittees may propose appropriate controls in their report to address pollutants in these types of discharges. These controls may include a prohibition on the use of chemicals and detergents and other BMPs.

15. **Comment:** Page 21, Section VIII, Item No. 2: Define "technology-based"

Response: This section has been deleted. However, this term is also used on page 14 of the fact sheet. "Technology-based standards" are the levels of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices. These pollutant reductions may be achieved using best conventional technology (BCT) or best available technology economically achievable (BAT). Please refer to the permit's glossary section for the definition of BAT and BCT. Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.

16. **Comment:** Page 21, Section IX: What is a mechanism to determine the effect of septic system failures on storm water quality and what type of mechanism to address such failures will we have by July 1, 2003?

Response: In most cases where septic systems fail, there is a likelihood for surfacing of sewage. The dry weather flows and/or storm water runoff from these areas is likely to contain indicator parameters (elevated bacterial levels, high suspended solids, high BOD, etc.). Upstream and downstream monitoring of such areas should indicate if failing septic systems are impacting storm water quality in the area. A number of mechanisms can be used to address the problem including replacement of failing septic systems and connecting such systems to sanitary sewer lines.

17. **Comment:** Page 24, Section X, Item B1: Industrial Development is not listed. Is the reason for this that our current New Development Guidelines already require Industrial Developments to submit a WQMP, or is it because Industrial Development should not install structural infiltration BMPS or is it because they are already subject to the General Industrial Activities Storm Water Permit?

Response: This item is now on page 32, Section XII, Item B1. The language has been revised to include industrial developments.

18. **Comment:** Page 25, Section X, Item B2: Please define "significantly" change the hydrology, increase the urban runoff flow rates or velocities or increase the pollutant loading.

    Response: These terms have been deleted.

19. **Comment:** Page 26, Section X, Item C3: Why structural infiltration treatment BMPs should not be used in industrial and high traffic areas? Is the reason for this that these land uses require a waste discharge permit? Aren't high traffic areas and industrial areas a major source of storm water pollution? Would it not be better to require that infiltration systems in high traffic areas and industrial areas be designed to remove pollutants before they enter the ground, rather than allow these pollutants into storm drains without treatment? What kind of storm water treatment would be necessary to protect groundwater or storm water quality from these land uses?

    Response: This item is now on page 34, section XII, Item C.3. If infiltration systems are used in such areas, there is a greater potential for accumulation of pollutants in the soil and eventually in the groundwater. However, if proper controls are implemented, most pollutants could be eliminated and infiltration should not be a problem. In most cases, storm water treatment may not be necessary if appropriate BMPs are being implemented. If pollutants are present in the runoff, the infiltration system can remove pollutants such as bacteria, sediments, and some of the metals. However, if pollutants such as chlorinated solvents (e.g., TCE, PCE) are present, unless it is treated, soil and groundwater could be adversely impacted. The treatment methods for removal of these pollutants vary depending upon the type of pollutants. A combination of BMPs and structural treatment systems seems to be the most effective way to control pollutants in storm water runoff.

20. **Comment:** Page 28, Section XII, Item No. 2: Replace Permittee with Principal Permittee

    Response: This item is now on page 36, Section XII, Item No. 2. Some of the co-permittees also own flood control facilities and therefore, this requirement applies to all permittees who own or operate flood control facilities.

21. **Comment:** Page 29, Section XIV: The reference to storm water management plan should be changed.

    Response: This item is now on page 38, Section XVI. It has been changed to MSWMP.

22. **Comment:** Page 35, Attachment 2, Section A: Reach 3 of the Santa Ana River is not included in the attachment.

Response: Reach 3 is not a part of the San Bernardino County MS4 permit. Please see our response to Comment 2, above.

23. **Comment:** Page 41, Section II, Item No. 10: In the paragraph below Item No. 10, replace "Permittees have been monitoring" with "Principal Permittee has been monitoring"

Response: This item is now on page 58. The latest draft of the Order includes the requested change**.**

24. **Comment:** Page 41, Section III, Item No. 1: Replace the second sentence with "By December 1, 2003, the Principal Permittee in collaboration with the co-permittees shall…"

Response: Please note that by definition, "permittees" include principal permittee. The permittees can decide who should be responsible for this task. As such, no change to the current language is needed.

25. **Comment:** Page 41, Section III, Item No. 2: Replace with "By December 1, 2003, the Principal Permittee in collaboration with the co-permittees shall…"

Response: Please see our response to Comment 24, above.

26. **Comment:** Page 42, Section III, Item No. 4: Change to "By July 1, 2002, the Principal Permittee, in collaboration with the co-permittees…"

Response: Please see our response to Comment 24, above.

27. **Comment:** Page 43, Section III, Item No. 4c, Parts II, IV, VII, and VIII: The City is concerned about the scope of the "Integrated Watershed Monitoring Program" and would like additional detail on the workload for the permittees. Tasks described in items II, IV, VII and VIII are not normally handled by the permittees.

Response: Please note that the tasks identified here are currently being performed, to a limited extent, by the principal permittee in collaboration with the co-permittees. It is expected that this collaboration will continue and the workload increase from these requirements will not be significant. The draft permit only prescribes minimum requirements for the Integrated Watershed Monitoring Program and provides sufficient flexibility to develop a monitoring program that is economically and technically feasible.

28. **Comment:** Page 44, Section IV, Item No. 2d: The Regional Board needs to let us know the impacts on receiving waters.

Response: This item is now on page 61. Please note that the requirement referenced here is for the permittees to review the monitoring results and assess the impact of urban storm water runoff on receiving waters based on these monitoring results. The Regional Board maintains information on impaired waterbodies within the Region in accordance with Section 303(d) of the Clean Water Act. This information is available on the Regional Board's website.

29. **Comment:** Page 44, Section IV, Item No. 2e: The City has not been notified whether or not the City is in compliance with the water quality standards.

Response: The impaired waterbodies in San Bernardino County within the Santa Ana Regional Board's jurisdiction are listed in Table 2 and shown on Attachment 1 of the permit. These are waterbodies where the designated beneficial uses are not met and the water quality objectives are being violated (water quality standards are not being met).

30. **Comment:** Page 44, Section IV, Item No. 3: Please note that the Principal permittee must be responsible for the submittal of all required information to the Regional Board in a timely manner.

Response: This requirement is included in the permit (please see Section I. 4 of the permit). However, for the Principal Permittee to accomplish this task, timely submittal of the information to the Principal Permittee by the co-permittees is essential.

31. **Comment:** Page 45, Section V, Part IV: Change wording to: "Pollutant source investigation and control plan to prevent or reduce pollutants into MS4 systems from contributing to the exceedance of water quality standards."

Response: Please note that this reporting requirement is consistent with the requirements specified under Section IV.3.a of the permit.

32. **Comment:** Page 45, Section V, Part VII: Change the language to include hazardous substance spills.

Response: The latest draft of the Order includes this change.

33. **Comment:** Page 46, Section V, Part X: There is a typographical error.

Response: The typographical error has been corrected.

B. RESPONSE TO CITY OF RANCHO CUCAMONGA COMMENTS (October 2, 2001):

34. **Comment:** Finding Item #23: "Successful implementation of the provisions and limitations in this order will require the cooperation of other entities and all the public agency organizations within San Bernardino County……." This requirement puts the Permittee and co-Permittees in the position of expecting outside agencies to totally understand that they are a part of the program. Cities are now in the position that they have resistance from within their own agencies to these changes. How can we be expected to make outside agencies abide by these regulations? Will we now be required to enact new more stringent ordinances and impose fines instead of asking for cooperation? This will take a major part of staff time and foster some resistance from outside agencies. If this item is to be left in it is recommended that the Board put some type of public education/information program together that will encourage these agencies to cooperate. A campaign that address these issues should be set forth to the City Managers, Building Officials and Planners as well as all the other agencies listed in Attachment 3.

Response: 40 CFR 122.26(d)(iv) requires the municipal permittees to develop and implement a comprehensive planning process which involves public participation and where necessary inter-governmental coordination. The permittees are the owners/operators of the MS4 systems and have established legal authority to control the discharge of pollutants to these systems as was required under Regional Board Orders No. 90-136 and 96-32. These orders also required the municipalities to establish a public education/participation program and to incorporate watershed protection principles into the General Plan and CEQA documents. The Regional Board has notified the entities listed in Attachment 3 regarding the urban storm water runoff program and the need to cooperate with the municipalities in this program. Regional Board staff has provided information regarding the storm water program at council meetings, municipal training programs, and other regional and statewide seminars.

35. **Comment**: II. RESPONSIBILITIES OF THE CO-PERMITTEES: "The co-permittees shall be responsible for managing the storm water program within their jurisdiction and shall….." This puts the responsibilities of the program on each jurisdiction and needs to be emphasized throughout the order.

Response: Comments noted; we believe that this emphasis has been made throughout the order.

36. **Comment:** II. 2 "Enact and revise policies and ordinances necessary to establish and maintain adequate legal authority as stated in Section V (10) of this order and as required by Federal Storm Water Regulations, ……determine if they are authorized to impose administrative fines for storm water violations." Current ordinances are uncodified and will require public hearings before they can be enacted. Along with this, co-permittees

need to standardize these ordinances, which in itself could take six months. The task is not impossible however the timeline should take this into consideration. Another issue is the Regional Board has the power to impose fines under Civil Liabilities that have greater monetary penalty than what the municipalities can impose. Imposing fines under the Government Code is agreeable when dealing with residents and small businesses, but when you are dealing with large businesses the government code does not provide enough power.

Response: 40 CFR 122.26 (d) (iv) (2) requires the permittees to establish adequate legal authority to control the discharge of pollutants to the MS4 systems. During the first/second term permits (1990-2001), the permittees developed and adopted a model storm drain ordinance. This permit requires the permittees to evaluate their ordinances to determine if they are authorized to impose administrative fines for storm water violations. The legal authority should be equally applicable to all violators (residential, commercial, small business, or industrial) of the ordinances. The Regional Board takes enforcement actions against violators of its permits and the statewide general permits. The permittees are required to enforce their ordinances.

37. **Comment:** Section II. 3: "Conduct storm drain system inspections and maintenance in accordance with uniform criteria developed by the principal permittee." Either strike this completely or add, "developed by a sub-committee of the permittees". Each community has a different type of maintenance programs and is responsible to manage their own programs. Providing a standard MS4 maintenance program that is agreed upon by all co-permittees will insure a quality program and data.

Response: The latest draft of the Order includes the revised language.

38. **Comment:** Section II.11. "Pursue enforcement actions as necessary within its jurisdiction to insure compliance…." If ordinances are being reviewed and updated then there is no need to have this in the order. The connection and illegal discharges are addressed in section III, why repeat it?

Response: The draft permit requires the permittees to continue to enforce existing laws and regulations. It also requires the permittees to review existing laws and regulations to determine if these laws and regulations provide adequate legal authority as required under 40 CFR 122.26 (d) (iv) (2).

39. **Comment:** Section III.2, DISCHARGE LIMITATIONS: "Discharges <u>into and from</u> the municipal separate storm sewer systems…." Change to "Discharges from the municipal separate sewer systems…."

Response: The latest draft of the Order includes the revised language.

40. **Comment:** Section III.4, DISCHARGE LIMITATIONS: "The following discharges may not contain pollutants…." Change to "The following discharges are not typically significant sources of pollutants…." I feel by making this change, it will leave us a little room to modify in the future.

Response: Please see the changes to Section III.3 in the latest draft.

41. **Comment:** Section III.4i, DISCHARGE LIMITATIONS: "dechlorinated swimming pool discharges". This has become an issue with many jurisdictions since it was first put into the permit. While some jurisdictions have allowed swimming pool discharge, others have passed ordinances requiring sewer discharge of pool water. If a pool is dechlorinated it may still contain pollutant i.e. acid, soda ash or copper sulfates. Waste Water Treatment plants feel swimming pool water is "clean water" and hinders their operation. This item needs to be clarified or totally deleted.

Response: Generally, dechlorinated swimming pool water should not contain significant amount of pollutants and should be suitable for discharge to MS4 systems. If the discharge is to a dry streambed where it is likely to percolate before reaching any aquatic habitat areas, chlorine or slight acidity may not cause any environmental harm. The permittees need to make a determination on a case-by-case basis to determine if the discharge is suitable for the MS4 systems. If the discharge is not suitable for MS4 systems, most of the sanitation districts will accept the discharge.

42. **Comment:** Section III.4j, DISCHARGE LIMITATIONS: "non-commercial vehicle washing" The issue here is do we allow any car washing at all that is not at a residence. A fund-raiser can be commercialized at a business site. With the new development and re-development guidelines many new sites will capture most pollutants while older sites will either need to capture and treat runoff.

Response: Non-commercial vehicle washing includes residential car washing and car washing operations conducted by non-profit organizations for fundraisers. All such car washing operations should be subject to appropriate BMPs.

43. **Comment:** Section III.7, DISCHARGE LIMITATIONS: "….reduce discharge….including trash and debris….maximum extent practicable". At what point are we to capture this material, before entering MS4 or before it enters the conveyance?

Response: Source control, including removal of trash and debris before it enters the MS4 systems, may be more practical and economical than downstream treatment and/or capture. However, the discharge limitations are to be met at the point of discharge to waters of the State. So the permittees have the option of capturing these materials before entering the MS4 systems or prior to its discharge to waters of the State.

44. **Comment:** VI.1 Legal Authority/Enforcement : Strike "and enforce" and clarify the use of "into and from". In a perfect world we would be stopping discharges before they get to our MS4, but it is not practicable. We can control discharges to maximum extent practicable through education and information. If all else fails then enforcement is necessary.

Response: In accordance with State Board Order No. 2001-15, the "into" provision has been deleted. The permittees should not only establish adequate legal authority, but also must enforce their laws and regulations.

45. **Comment:** VI.2 Legal Authority/Enforcement : "formalized enforcement procedures developed by the Management Committee." Does this mean we are now to either put enforcement on police, code enforcement or do we put a new level into our program. A NPDES Code Enforcement Officer? It is difficult to have the police do anything outside the vehicle or penal code and many code enforcement staff are not versed enough to deal with NPDES issues. If we are to proceed with this, we need assistance in putting together a NPDES Code Violation book.

Response: The Management Committee appointed by the permittees developed an enforcement policy for uniform enforcement of the storm water ordinance. From the information provided to the Regional Board, it appears that the permittees agreed to abide by this enforcement policy. For an effective storm water management program, it is critical to train appropriate employees within each permittee organization. The principal permittee arranged a number of training sessions for municipal employees. Regional Board staff participated in these training sessions. It is anticipated that these training sessions will continue during the third term permit.

46. **Comment:** VI.3 Legal Authority/Enforcement : "The permittee shall continue to provide notification to Regional Board staff…. during site inspections…. sites regulated by the Statewide General Storm Water Permits or sites which should…. " This section needs some review are we to enforce or report?

Response: The permittees are required to conduct inspections and to enforce local ordinances. The Regional Board enforces the statewide General Permits and individual NPDES permits issued by the Regional Board. The permittees have been notifying Regional Board staff of any observed violations of the General Permit during their inspections. The requirements specified here formalize this procedure to avoid duplicative efforts and to make the best use of limited resources.

47. **Comment:** VI.4 Legal Authority/Enforcement : This section needs to be divided into a section for prohibiting and controlling. Some of these items need absolute prohibition while controls can be put on others. Items a), b), c), f), & i) should be prohibited while d), e), g), & h) should be controlled. All of these items can be further broken down as

some are totally controllable and others should be reviewed. Again the swimming pool issue comes up. Either swimming pool discharges should be allowed or not.

Response: The permittees have the flexibility to propose control mechanisms or to prohibit these discharges. The draft order requires the permittees to review their ordinances to determine if these kinds of discharges are effectively controlled.

48. **Comment:** VI.4.c) Legal Authority/Enforcement : Item c) refers to "portable toilet servicing" to my knowledge portable toilets are being controlled to some extent by public health. Is it being suggested we start monitoring portable toilets? If so, what are we to monitor? Cleaning, spills or both?

Response: The permittees are required to determine if wastes generated from portable toilet cleaning operations are causing a water quality problem in the MS4 systems. If other entities (such as public health) are regulating all aspects of portable toilet operations and maintenance, and if it is not causing a problem, the review should make such a determination.

49. **Comment:** VI.4.d) Legal Authority/Enforcement : Item d) "Wash water from mobile auto detailing and washing…. Carpet cleaning" these areas are controllable.

Response: Please note that the requirement is for the permittees to review their ordinances to determine the effectiveness of these ordinances in prohibiting or controlling these types of discharges.

50. **Comment:** VI.4.h) Legal Authority/Enforcement : Item h) "Pet waste, yard waste, debris, sediment, etc." this could include cats, horses, as well as dogs. Regarding yard waste banning backpack blowers has been tried, maybe a campaign showing that yard waste needs to be picked up not just blown out into the street. "debris" ?

Response: Please see response to Item 14, above.

51. **Comment:** VII. ILLEGAL DISCHARGES/ILLICIT CONNECTIONS; LITTER, DEBRIS AND TRASH CONTROL: "….review their litter/trash control ordinances to determine the need for any revisions" "…. permittees are encouraged to charactize trash, determine its main source(s)….." Eliminating trash at its source is not easy as the majority of trash comes from the community itself. A section in the Public Education and Outreach section needs to be added to include a campaign showing the community can help by cleaning up around their homes and businesses and as has been done on some of our current outreach, show how trash affects the ocean, rivers and streams.

Response: It appears that the commenter is proposing to modify the current public education program developed by the permittees to address these issues. The permittees

are required to review, and if necessary, modify the public education and outreach programs.

52. **Comment:** VIII. CRITERIA FOR ACCEPTING RUNOFF INTO THE MS4s: This is one of the sections that uses ensure (ensure – to make sure or certain; insure [inevitable]) in the context reduce runoff and discharges to maximum extent practicable before entering the MS4.

Response: This section has been deleted.

53. **Comment:** VIII.1 CRITERIA FOR ACCEPTING RUNOFF INTO THE MS4s: "….unless the MS4s are used to convey storm water to an approved regional treatment system." A treatment system would be practicable however would it be cost effective and who would build, maintain and fund these treatment plants. I know that the City of Santa Monica has built a multi-million dollar plant to treat runoff from their community. The system is backed up with several up stream BMP's to help reduce the debris and trash. Also, if there is a list of approved treatment systems, I would be interested in getting a copy to pass on to our planners for future development.

Response: As per State Board Order No. 2001-15, the "into the MS4" provisions have been deleted from the draft order. For the Orange County areas, the Irvine Ranch Water District is proposing natural treatment systems. The permittees are encouraged to develop regional solutions, such as the natural treatment systems. The Regional Board does not maintain a list of approved treatment systems. The principal permittee and some of the other permittees have regularly participated in the statewide Storm Water Quality Task Force and other such forums. Generally, such forums are a good source of information on storm water treatment systems.

54. **Comment:** Section VIII.2 CRITERIA FOR ACCEPTING RUNOFF INTO THE MS4s: "….technology-based standards." We would appreciate a copy of these standards.

Response: "Technology-based standards" are the levels of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices (BMPs). These pollutant reductions may be achieved using best conventional technology (BCT), or best available technology economically achievable (BAT). Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.

55. **Comment:** Section IX.1 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. " The Executive Officer will request the local sewering agencies to work cooperatively with the permittees…." Change request to require. Some agencies are privately owned and need a little more encouragement to assist in the NPDES programs.

Response: The Regional Board may consider issuing General Waste Discharge Requirements for the sewage collection agencies within the Region to address sanitary system overflows. The Board conducted two public workshops on draft General Waste Discharge Requirements for the Orange County area sewage collection agencies.

56. **Comment:** Section IX.2 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. "….whose jurisdictions have 50 or more septic tank sub-surface disposal systems in use, shall identify….determine the effect of septic system failures…." Why is the number 50 used and what is the intent. Are we looking for residents/businesses that are not properly servicing septic tanks/leach fields or is it the concept of septic tank system affect on ground water. This needs some clarification as to the reasoning to monitor or do a study on septic systems.

Response: The intent here is to determine the impact of failing septic systems on storm water quality**.** In most cases where septic systems fail, there is a likelihood for surfacing of sewage. The dry weather runoff and storm water runoff from these areas are likely to contain indicator parameters (elevated bacterial levels, high suspended solids, high BOD, etc.).

57. **Comment:** Section IX.3 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. "….develop a unified response mechanism to respond to any sewage spill that may have an impact on receiving water quality." There are already spill response systems in place for <u>any</u> sewage spill. Change this to "continue to work with local sewer agencies in responding to sewage spills and provide documentation to permittees."

Response: The intent of this requirement is for the permittess to develop and implement a unified response mechanism to respond to sewage spills. It is likely that some of the jurisdictions may be already doing this.

58. **Comment:** Section IX.4 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. "….review…..current programs for portable toilets…." This City has no oversight program for portable toilets only a business license requirement. The County Environmental Health Department permits portable toilets from a public health standpoint.

Response: The permittees are required to determine if wastes generated from portable toilet cleaning operations are causing a water quality problem in the MS4 systems. If other entities (such as public health) are regulating all aspects of portable toilet operations

and maintenance, and if it is not causing a problem, the review should make such a determination.

59. **Comment:** Section X. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT): Again this section makes reference to the word "ensure".

Response: Comment noted.

60. **Comment:** Section X.A. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT): GENERAL REQUIREMENTS: The items in this section are possible however some of the timeframes are going to be difficult to meet. For instance changing a General Plan, Zoning, Codes, or Development Guidelines take time to be reviewed by both the City and the Business community.

Response: Comment noted. Please note that the requirements are to review the current programs and policies to determine if storm water-related issues are properly considered and addressed.

61. **Comment:** Previously, most all the construction, industrial & commercial sites have been reviewed, inspected and advised if any violations and persistent violators have been reported the Regional Board. Is, the review, inspection & advisement going to shift to the permittees not the Regional Board?

Response: The permittees are required to conduct inspections and to enforce local ordinances. The Regional Board enforces the statewide General Permits and individual NPDES permits issued by the Regional Board. The permittees have been notifying Regional Board staff of any observed violations of the General Permit during their inspections. The requirements specified here formalize this procedure to avoid duplicative efforts and to make the best use of limited resources.

62. **Comment:** Section X.B. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT): WATER QUALITY MANAGEMENT PLAN(WQMP) FOR URBAN RUNOFF (FOR NEW DEVELOPMENT/SIGNIFICANT RE-DEVELOPMENT)

1. d) "Automotive repair shops…." Is this any automotive repair shops? No square footage for re-development?
   i) "Retail gasoline outlets" same question as 1.d)

Response: The requirements for retail gasoline outlets have been deleted from the latest draft. All automotive repair shops under the listed SIC codes are included; there is no square footage specified here.

63. **Comment:** Section X.B. 3. Volume
1. remove "24-hour"

Response: The volume of runoff produced from a 85th percentile 24-hour storm event is one the criteria for design of the volume based BMPs.

64. **Comment:** Section X.B. 3. Volume
2. Change to "The maximized capture volume for the area, from the volume capture formula recommended in……"

Response: The language in the draft Order is consistent with other MS4 permits and seems to be the appropriate language.

65. **Comment:** Section X.B. 3. Volume
4. Delete this entire section as it is already covered in previous sections 1-3 of volume.

Response: Please note that Item 4 is not covered under Items 1-3 of this section.

66. **Comment:** Section X.B Volume The last paragraph is section X referring to "….permittees may propose any equivalent sizing criteria for BMPs……." Should be moved to before item "C" or given a subtitle indicating Alternatives.

Response: Please note the changes in the latest draft.

67. **Comment:** Section XI.3 PUBLIC EDUCATION AND OUTREACH: "The Committee shall ensure implementation of BMPs listed in the ROWD (Appendix C) for restaurants, automotive service centers, gasoline service stations and other similar facilities." This should read "The Co-permittees shall verify implementation of BMPs…."

Response: Please note the changes in the latest draft.

68. **Comment:** Section XI.4 PUBLIC EDUCATION AND OUTREACH: Regarding a hotline to report illegal dumping. This has been addressed several times with the final conclusion that each co-permittee needs to put a number local number on the flyers and/or have citizen's call 911.

Response: In situations where there is an immediate threat to public health and the environment, the use 911 may be appropriate. However, to report other types of illegal dumping the use of 911 may not be appropriate.

69. **Comment:** Section XI.5 PUBLIC EDUCATION AND OUTREACH: We have already developed most of this information. This should suggest review of current efforts to determine if more items are needed.

Response: Comment noted.

70. **Comment:** Section XII. MUNICIPAL FACILITIES/ACTIVITIES: Rather then (sic) develop fact sheets which we already have, we should develop a condensed BMP handbook for each area of concern and incorporate all of the information we have gathered over the last DAMP & ROWD. Why reinvent the wheel let's just improve it.

Response: If the Management Committee decides to develop and distribute condensed BMP handbooks in lieu of BMP fact sheets, that should satisfy this requirement.

71. **Comment:** Section XVII. PERMIT EXPIRATION AND RENEWAL: Expiration date should reflect the actual date of adoption.

Response: Comment noted; the expiration date will be changed to reflect the date of adoption.

C. RESPONSE TO CITY OF FONTANA COMMENTS:

72. **Comment:** The City is concerned about the repeated use of the words, *ensure and insure and assure.*

My Webster Dictionary states that insure means to provide or obtain insurance on or for something, or to make certain.

- The same dictionary states that ensure means to guarantee.
- The same dictionary says that assure means to make certain of attainment.

How is it possible for any agency to comply with these terms??

Response: Where appropriate, clarifications have been added.

73. **Comment:** Permit page 14, Item # 47.
    a. *Comments,* needs to be defined. If we are talking about during management program development, all of our meetings are open to the public. Do we need to provide another public forum for these issues?
    b. If we are referring to the implementation stages, does this mean that we are required to send the Board copies of all complaints?

Response: The storm water regulations, at 40 CFR 122.26(d)(2)(iv), require public participation in the comprehensive planning process for storm water management programs. The Regional Board should be notified of all appropriate comments received from the public during this public participation process.

74. **Comment:** Permit page 22, Item # 4e.
    a. How can we possibly control discharges from these discharges in the residential areas?

Response: Section VI. 4.e. of the Order requires the permittees to review their ordinances to determine the effectiveness of these ordinances in prohibiting or otherwise controlling these types of discharges. Public education should be an important part of this program.

75. **Comment:** Permit page 22, Item #5.
    a. The word *debris* needs to be defined.

Response: Debris is defined as the remains of anything destroyed or broken, or accumulated loose fragments of rock.

76. **Comment:** Permit page 23, Item#VIII-2.
    a. What are the technology-based standards that we are being asked to *ensure?*

Response: "Technology-based standards" are the levels of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices, or BMPs. These pollutant reductions may be achieved using the best conventional technology (BCT) or the best available technology economically achievable (BAT). Please refer to the permit's glossary section for the definition of BAT and BCT. Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.
Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.

77. **Comment:** Permit page 23, Item#IX-2.
    a. Is the Board really asking the Cities to inspect private property septic systems? This would be a full time position.

Response: The permittees are generally required to determine if septic system use as a whole within their jurisdiction is causing or contributing to water quality problems in storm water runoff from the municipal separate storm sewer systems. The permittees are provided discretion on how to achieve that goal.

78. **Comment:** Funding

a. These items are un-funded. Since it would require a vote by the citizens to pass a new tax, which we know won't happen, the only way most cities could fund the items called for in this permit would be to reduce public safety funding.

Response: Please note that the Order implements federal laws as per the 1987 Clean Water Act Amendments, Section 402(p) and the implementing regulations contained in 40 CFR Parts 122, 123, and 124. These programs and policies are necessary for water quality protection. During the last two permit terms, the permittees have implemented most of the essential elements of the storm water program. The proposed draft includes improvements to these programs and policies and are consistent with the federal and state laws and regulations. Please note that the federal regulations, 40CFR Part 122.26(d)(1)(vi), also require the permittees to provide adequate funding for the storm water program.

II. RESPONSE TO COMMENTS ON THE THIRD DRAFT (JANUARY 9, 2002)

A. RESPONSE TO CITY OF ONTARIO'S COMMENTS DATED JANUARY 31, 2002:

79. **COMMENT:** Fact Sheet Section V B. Table 2 and Attachment 1 Watershed Map showing 303(d) waterbodies**.** Table 2 does not include Reach 3 of the Santa Ana River which is impaired for TDS, Salinity, Chlorides and Nutrients, Prado Lake which is listed for Nutrients and Pathogens, or Mill Creek (Prado Area) which is listed for Nutrients, Pathogens and Suspended Solids. Attachment 1 is very difficult to read and does not show all major surface water bodies or all impaired water bodies in the watershed, i.e. San Antonio Creek, Day Creek, Deer Creek, Reach 5 or 6 of the Santa Ana River.

RESPONSE: Reach 3 of the Santa Ana River was not included in Table 2 because it is located outside the San Bernardino County project area. Attachment 1 was intended to show only the boundaries of the project area and it does not include all surface waterbodies within the project area.

80. **COMMENT: Fact Sheet Section IX B**. **Receiving Water Limitations.** The City is not familiar with Order No. WQ 99-05. Please provide us with a copy of this order for our review.

RESPONSE: Order No. WQ 99-05 may be downloaded from the following website link: http://www.swrcb.ca.gov/resdec/wqorders/1999/wqo99.html.

81. **COMMENT:** Section I, Item 19**.** Last sentence " Discharge Prohibition Section III, should be Item 3 not 4 of this order.

RESPONSE: Item number has been corrected.

82. **COMMENT:** Section I, Item 47 (Finding 47). Why does it state that the permittees established a subcommittee "and developed a list of routine structural and non-structural Best Management Practices for new development (1-5 acres)."? -This is not our criteria for application of the New Development Guidelines.

RESPONSE: Reference to "1-5 acres" has been deleted from Finding 47.

83. **COMMENT:** Section III, Item 2. Discharge Limitations/Prohibitions**.** Replace with "The permittees shall implement and require the implementation of best management practices to reduce pollutants in storm water to the maximum extent practicable."

RESPONSE: Please note that this language is the same as in other recently adopted MS4 permits and is consistent with Section 402(p) of the clean Water Act and the storm water regulations contained in 40 CFR Parts 122, 123, and 124.

84. **COMMENT:** Section IV, Item 1**.** Replace wording with "Discharges from the MS4s of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to exceedances of receiving water quality standards …"

RESPONSE: The issue of Receiving Water Limitations in the MS4 permits have been intensely debated and appealed to the State Board. The language used here is consistent with the guidance provided in State Board Order No. WQ 99-05.

85. **COMMENT:** Section IX, Item 4.: Municipal Inspections of Industrial Facilities**.** This section of the permit requires that the City conduct monthly compliance inspections at al**l** businesses where inappropriate material and waste handling or storage practices are observed, or there is evidence of past or present unauthorized, non-storm water discharges by July 1, 2003. When the City begins to accelerate its inspection program in response to this permit, it will be impossible for the City to know how many industries will be improperly storing materials or discharging non-storm water. Therefore, it is impossible to budget staff to ensure this requirement can be met. It is also excessive to require the inspection of a facility monthly, when a Notice of Correction has been issued, a SWPPP has been prepared to address problems or a facility is on a Compliance Time Schedule to make the required corrections. High priority sites will be inspected annually anyway. The City should be able to make the decision as to how often a business needs to be re-inspected and when. For example, a Notice of Correction may require compliance by a specific date or the business submits a compliance time schedule for

approval by the City with a final due date. This City should inspect the facility on the date that the business agreed to be in compliance.

RESPONSE: This section has been revised to clarify the language and to provide some flexibility to the permittees with respect to inspection frequencies.

86. **COMMENT:** Section X. Item 5. Request extension until end of permit term.

RESPONSE: Regional Board staff feels that the July 1, 2004 deadline, for inspecting high priority commercial sites, gives the permittees a reasonable amount of time by which to complete the required inspections.

87. **COMMENT:** Section XII, B, Item 1**.** By July 1, 2003, the permittees shall review their existing ~~BMPs~~ **WQMP** for new developments to determine the need for developing any additional ~~WQMPs~~ **BMPs** for urban runoff. Under this same section, it is surprising to us that Retail Gasoline Outlets were eliminated from the list of project types that would require this review for additional BMPs. Retail Gasoline Outlets were listed in the first draft of this NPDES Permit, under this same section. We currently list Fuel Dispensing businesses in Table 4-1 and Table 4-2 of Chapter 4 of the ROWD as candidate New Development/Redevelopment projects for application of the WQMP requirement.

RESPONSE: Section XII, B, Item 1 has been revised. Retail Gasoline Outlets (RGOs) were removed from the list of projects requiring additional BMPs based on the State Board's SUSMP decision, Order WQ 2000-11. State Board concluded that because RGOs are already regulated and may be limited in their ability to construct infiltration facilities or to perform treatment, they should not be subject to the BMP design standards at this time. The State Board recommended that the Regional Board undertake further consideration of a threshold relative to size of the RGO, number of fueling nozzles, or some other relevant factors. However, the State Board indicated that the decision should not be construed to preclude inclusion of RGOs in the SUSMP design standards, with proper justification, when the MS4 permit is reissued. The March 1997 California Stormwater Quality Task Force BMP Guide for RGOs can be used by the permittees as a starting point in drafting BMP requirements for RGOs. However, the permittees can require other BMPs, as they deem necessary.

88. **COMMENT: Section XIII, Item 3.** Change the last sentence "The permittees shall distribute these BMP brochures **or BMP Fact Sheets** to these facilities during inspections …"

RESPONSE: The language **has been** changed.

B. CITY OF CHINO HILLS' COMMENTS (DATED JANUARY 23, 2002) – REPRESENTED BY RUFUS YOUNG, JR. OF BURKE, WILLIAMS & SORENSEN, LLP

89. **COMMENT:** The Regional Board has no authority to regulate the manner in which cities exercise their land use authority.

RESPONSE: Storm water and other water quality issues must be considered early on in the planning stages of a project. The draft permit requires the permittees to review their planning documents to determine if water quality protection principles and policies are properly addressed in those documents. This in no way infringes on the permittees' land use authority.

90. **COMMENT:** The Regional Board exceeds it authority by requiring property owners to "conserve natural areas" and "maximize the percentage of permeable surfaces to allow more percolation of storm water into the ground" without providing "just compensation."

RESPONSE: This section of the draft permit requires the permittees to consider such factors as conservation of natural areas and maximization of permeable areas to minimize adverse water quality impacts due to the development. `It does not require conservation, but only suggests that it is one means to address the water quality issue. In certain situations, it may be possible to conserve natural areas and to maximize permeable areas and protect water quality without compromising on other aspects of the proposed project. Once again, this requirement is intended to protect water quality through proper planning procedures.

91. **COMMENT:** In Part IV.2, RECEIVING WATER LIMITATIONS, the "cause or contribute" language of the Order must be modified. The State Board's language in SWRCB WQ99-05 excised the "cause or contribute" language from Order 98-01, and it provides the language which must be used in municipal storm water permits. The balancing required by CWA Section 402(p)(3)(B)(iii) and California Water Code Section 13241(c) and (d) clearly authorizes and requires a regional board to reject inclusion of an "or contribute" standard, notwithstanding SWRCB Memorandum on Receiving Water Limits in Municipal Storm Water Permits, of 1999.

RESPONSE: The "cause or contribute" language found in Section IV.1, Receiving Water Limitations, is essentially identical to that found in the Receiving Water Limitation section of SDRWQCB 2001-01, which states that "Discharges from MS4s that cause or contribute to the violation of water quality standards … are prohibited." The State Board in WQ 2001-15, found the Receiving Water Quality Limitations in SDRWQCB 2001-01 consistent with SWRCB 99-05. Therefore the "cause or contribute" language will

remain.

92. **COMMENT:** The imposition of "Peak Flow Control" measures stretches the Order beyond the authority of the Board. Part XII.B.3 of the Order would impose the requirement to control the volume or maximum flow or runoff for all new development and significant redevelopment. The Board's authority under the CWA's MS4 program is limited to controls on pollutant discharges.

RESPONSE: Section XII.B.3 describes the volume-based and flow-based numeric sizing criteria for treatment or infiltration devices to reduce pollutant loading in storm water. State Board in Order WQ 2000-11 upheld similar language in the Los Angeles Region's SUSMP requirements.

93. **COMMENT:** The definition of "redevelopment" in the Order is inconsistent with and preempted by the controlling EPA definition of "redevelopment." EPA intends the term "redevelopment" to refer to alterations of a property that change the "footprint" of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls.

RESPONSE: This definition of "significant redevelopment" as the disturbance of equal to or greater than 5,000 square feet is same as that adopted in the Los Angeles Regional Board SUSMP Order and the San Diego Regional Board, San Diego County MS4 Permit, both of which have been reviewed and upheld by State Board. Please see State Board Order WQ 2000-15.

94. **COMMENT:** The Order should exempt discharges from federal and state facilities, agricultural storm water discharges and irrigation return flows within a co-permittee's boundaries from Part III, "Discharge Limitations/Prohibitions."

RESPONSE: Please see Finding 12; the Regional Board recognizes that the permittees may lack jurisdiction to regulate these types of discharges.

95. **COMMENT:** The Regional Board has failed to comply with the California Environmental Quality Act ("CEQA") with respect to provisions of the Order not required by the Clean Water Act.

RESPONSE: The issuance of the MS4 permit in its entirety is exempt from the documentary requirements of CEQA pursuant to Water Code Section 13389. Contrary to the comment, the provisions of the Order do not go beyond the requirements of the Clean Water Act. Accordingly, as the State Board recently concluded, CEQA does not apply in the manner asserted. Please see SWRCB Order WQ 2000-11.

96. **COMMENT:** The Order would impose unfunded mandates in violation of the California Constitution. The Order would require numeric design standards; inspections of facilities subject to state general permits; response to SSOs; and imposition of development and redevelopment controls. The imposition of these requirements, none of which are required under the Clean Water Act, constitute imposition of unfunded mandates on the co-permittees in violation of the California Constitution.

RESPONSE: First, and most importantly, the Order does not purport to implement state law, but rather implements federal law as provided in the Clean Water Act and the municipal storm water regulations promulgated thereunder. Second, the State Board has already addressed the issue in its SUSMP Decision, Order WQ 2000-11. There, the State Board indicated that its earlier decisions held that the constitutional provisions cited by the commenter have no application to the adoption of NPDES permits. The SWRCB cited San Diego Unified Port District, Order No. 90-3 for the proposition that the Constitutional mandate requirements do not apply to NPDES permits issued by Regional Board, in that the NPDES permit program is a federally-mandated program, rather than state-mandated. (Id, at page 14) The Regional Board's issuance of the MS4 permit does not require that the State provide funding for its implementation.

97. **COMMENT:** The Order should be revised to delete requirements that co-permitteees are to assume inspection responsibilities for facilities subject to state general permits which are the sole responsibility of the Regional Board. The State Board assigned General Permit duties to the regional boards.

RESPONSE: Federal regulations require the permittees to control the discharge of pollutants from industrial and construction sites. 40 CFR 122.26(d)(2)(I) states that the permittees must demonstrate that they have adequate legal authority to control "the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity," prohibit "illicit" discharges to the municipal storm sewer," control "the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water," and "carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer." Please note that implementation and enforcement of the State's General Permits will continue to be the responsibility of the Regional Board. However, at a number of these sites, the daily changes in site conditions and practices and the potential for discharges from these sites to cause or contribute to exceedances of water quality objectives require this extra level of local inspection and enforcement.

98. **COMMENT:** Part III.3.n), providing for a conditional exemption on "emergency fire fighting flows" but not training flows, is overly restrictive and should be broadened to exempt non-emergency and training flows.

RESPONSE: Non-emergency and training flows have not been exempted from the Order because they are planned events in which best management practices to eliminate or reduce pollutants could be easily and reasonably implemented.

C. CITY OF CHINO HILLS' COMMENTS (DATED JANUARY 17, 2002) – REPRESENTED BY BURKE, WILLIAMS & SORENSEN, LLP

99. **COMMENT:** The report "Cost of Storm Water Treatment for the Los Angeles County NPDES Permit Area," June 1998, by Brown & Caldwell, is evidence that the cost of storm water compliance for the areas affected by very similar storm water permits issued for a very similar geographic area by the Los Angeles Regional Board, will exceed $50 Billion. Evidence of costs for the San Bernardino County area are shown in Table C-10 of "Cost of Storm Water Treatment for California Urbanized Areas," CTSW-RT-98-097-d. These storm water cost studies must be taken into consideration and addressed in reevaluating the requirements to be imposed on the co-permittees. This is because MS4 permits are issued under Section 402(p)(3)(B)(iii) of the CWA. Similarly, Section 13263(a) of the California Water Code requires regional boards, when prescribing waste discharge requirements, to take into consideration the provisions of Sections 13241(c) and (d). Those sections require a balancing similar to that required by Section 402(p)(3)(B)(iii) of the CWA. These sections clearly authorize and require the Board to consider, and to justify, the costs of permit compliance.

RESPONSE: Please note that the $50 billion cost quoted in the comment letter is from a report that Caltrans prepared for advanced treatment of storm water. The draft permit requires the permittees to control the discharge of pollutants in storm water runoff to the maximum extent practicable through the development and implementation of management programs. The draft does not advocate or require complete treatment. On November 19, 2001, we responded to this issue in response to a similar comment on the North Orange County MS4 permit (letter from Gerard Thibeault to Rufus Young). As indicated here, the cost estimates provided in the comment letter are not relevant and the commenter should provide cost estimates that are specific to the regulatory provisions of this draft permit.

The public adoption process for the Tentative Order enables the SARWQCB to consider all potential impacts, beneficial and detrimental, consistent with the public interest. The regional board is not required to undertake a formal Cost/Benefit Analysis, or other comprehensive economic analysis for the issuance of waste discharge requirements. While regional boards are required to consider economic factors in the development of

basin plans (W.C. 13241), regional boards are not specifically required to undertake Cost/Benefit Analysis for NPDES permits. Neither do federal regulations compel reliance on any particular form of economic analysis in the implementation of requirements based on the MEP performance standard; the admonition quoted from 64 Fed. Reg. 68722 & 68732 calls for flexible interpretation of MEP based on site-specific characteristics and "cost considerations as well as water quality effects…." Thus, while the regional board is advised to consider costs as a factor in determining the reasonableness or practicability of requirements, there is no state or federal mandate for a more formal economic analysis involving the development of Cost/Benefit or Cost-Effectiveness relationships. The SARWQCB considers factors that balance environmental protection with job creation, housing construction and affordability, and maintain a healthy economy during the process of adoption of the Tentative Order. It is the responsibility of the SARWQCB to protect the beneficial uses of receiving waters within the Santa Ana Region through the development and enforcement of waste discharge requirements and permits while considering the costs required to protect or restore those waters. It is the responsibility of the permittees, however, to secure the resources and implement and enforce the programs necessary to meet the requirements of the Tentative Order.

The SARWQCB has reviewed information regarding the costs associated with implementation of requirements for discharges to MS4 as well as the costs incurred as a result of exceedances of receiving water quality objectives associated with discharges from MS4. While there will be, undoubtedly, increased costs to municipalities to implement requirements of the Tentative Order, the increased burden associated with these requirements is not unreasonable in view of the following factors: municipalities can pass costs for planning and permitting on to permit applicants; municipalities can impose fees on persons who use MS4 infrastructure or require services from the municipality; municipalities can incorporate pollution prevention and control planning into existing planning activities; and municipalities can incorporate pollution control programs into existing regulatory functions. It is the responsibility of the permittees to develop and implement a balanced program in compliance with the Tentative Order that will minimize costs and maximize benefits. Finally, to the extent that the comment suggests that the Regional Board must conduct a cost-benefit analysis by demonstrating that the water quality benefits outweigh the economic costs, the SWRCB has rejected that argument. (SWRCB Order WQ 2000-11, pp 19-20.)

D. COMMENTS FROM CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY – DATED FEBRUARY 8, 2002

100. **Comment:** Finding #14, Pg. 5. Increases in runoff volume and velocity have not been proven to cause scour, erosion, etc. Therefore, we suggest changing the wording of this section to, " Increase in runoff volume and velocity may cause scour, erosion (sheet, rill and/or gully), aggradation (raising of a streambed from sediment deposition), changes in fluvial geomorphology, hydrology, or changes in the aquatic ecosystem."

Response: The language has been changed as recommended.

101. **Comment:** Finding #20, Pg. 7. MEP is defined in a footer on page 7 to be maximum extent possible… As clarified by staff at the January 23rd workshop, MEP should be defined as maximum extent practicable.

Response: The MEP definition has been changed to maximum extent feasible in the footnote to be consistent with the definition in the Orange County MS4 Permit.

102. **Comment:** Finding # 21, Pg. 7. Protection of beneficial uses of receiving waters sounds like something that everyone should support. However, upon further review, it becomes evident that some beneficial uses (municipal water supply, rec1, etc.) within some receiving waters are not practicable or achievable within the realm of MEP. These beneficial uses were last updated in the 1995 Basin Plan. The problem with this last update is that there is no proof that achievability, housing, or other economic factors were considered when these beneficial uses were established.

Response: Please note that most of these beneficial uses were established during the development of the 1975 Basin Plan. The requirement to consider the above stated factors (Water Code Section 13241) was adopted later. The 1975, 1984, and the 1995 Basin Plans were developed and adopted with public input and consistent with State and federal laws and regulations. The draft permit implements the Basin Plan requirements and storm water laws and regulations. As new water quality objectives are established or if existing water quality objectives are revised, these factors will be taken into account. The Regional Board, in adopting Waste Discharge Requirements must implement the current Basin Plan beneficial uses.

103. **Comment:** Finding # 29, Pg. 9. The Permittees have been spending a lot of money on storm water monitoring, however it does not appear that any of this information is being used to direct Permit requirements. As noted by the monitoring results specified in this section, as well as monitoring results from other regions, residential land-use has not been identified as containing elevated pollutant levels, yet new residential development continues to be targeted heavily in municipal storm water permits. The monitoring data being collected should be used to target requirements and thus limited resources on high-priority areas of concern, not on areas that do not warrant a high level of concern.

Response: The number of enforcement actions based on evidence collected by Regional Board staff during inspections of construction sites indicates that constructions sites continue to be a significant source of pollutants in storm water runoff. Furthermore, monitoring requirements are an integral part of all NPDES permits and they are critical to define water quality status and trends, to identify sources of pollutants, to characterize pollutants and to evaluate the effectiveness of existing management programs.

104. **Comment:** Finding #50, Pg. 14. In promulgating MS4 permits, the Regional Board has routinely relied upon Water Code section 13389 to exempt itself from CEQA's requirement that all actions impact the environment be analyzed completely for the public benefit. However, this statement vastly overstates the CEQA exemption. This Permit fails to appreciate the statutory scheme of Chapter 5.5 of the Water Code (containing Section 13389) which was not enacted to excise independent state law requirements from CEQA, but simply to ensure that the regional boards could comply with the minimal requirements of the federal Clean Water act without having first to conduct an EIR. This concern is absent for permit provisions not required by the Clean Water Act.

Response: Contrary to the comment, the provisions of this permit do not go beyond the requirements of the Clean Water Act. Accordingly, as the State Board recently concluded, CEQA does not apply in the manner asserted. Please see SWRCB Order WQ 2000-11.

105. **Comment:** Part IV. Receiving Water Limitations, Pg. 18, Item #1. This provision is not consistent with, and in fact violates, SWRCB Order No. 99-05. In fact, it is the "shall not cause or contribute" language that Order 99-05 expressly struck and replaced. "It is hereby ordered that Order WQ 98-01 be amended to remove the receiving water limitation language contained therein and to substitute the EPA language." (Order 99-05, p.1, emphasis added.) The "EPA language" referred to does not include the "cause or contribute" language that was present in Order 98-01. On the contrary, the EPA language outlines a series of practicable safeguards to reasonably accomplish Basin Plan objectives. Thus, this Permit's strict receiving water prohibitions do not comport with Order 99-05. Further, Order 99-05 expressly includes in its language that it is a "precedential decision," unlike the SUSMP Order. Order 99-05 states outright that the "cause or contribute" language of 98-01 is removed and replaced with the language of Order 99-05. The provisions are mutually exclusive, and Order 99-05 resolved which controls.

Response: The "cause or contribute" language found in Section IV.1, Receiving Water Limitations, is essentially identical to that found in the Receiving Water Limitation section of the San Diego County Permit. The State Board in Order WQ 2001-15, found the Receiving Water Limitations in the San Diego County Permit to be consistent with SWRCB Order WQ 99-05. Therefore, the "cause or contribute" language is appropriate.

106. **Comment:** Part XII. New Development, Pg. 29, Item #5. By virtue of this reference, and numerous others like it throughout the Permit, it is clear that the Permit attempts to regulate not only the quality of water, but quantity of water as well. Under the CWA's NPDES program, the Regional Board is empowered to regulate pollutants. This does not include quantities of water, absent some showing that the regulation is aimed at

pollutants, not simply the existence of a volume or flow rate the Regional Board deems undesirable.

Response: The draft Permit no longer requires maintaining pre-development site hydrology, but instead requires to minimize downstream erosion and maintenance of stream habitat. However, no net increase in post-development runoff flow and velocity remains a goal. U.S. EPA guidance points out that impacts on receiving waters due to changes in hydrology can often be more significant than those attributable to the contaminants found in storm water discharges.

107. **Comment:** Part XII. New Development, Pg. 29, Item #5a. Whether or not intended, there can be no question that the provisions of the Permit have a tremendous impact on the land use decision-making authority of local agencies. To name just a few, the Permit mandates CEQA changes, General Plan amendment procedure changes, and limitation on land uses in areas designated ESAs, regardless of the fact that preexisting designations on which the Permit relies had nothing to do with storm water considerations.

Response: Storm water and other environmental impacts must be considered early on in the planning stages of a project. The draft permit requires the permittees to review their planning documents to determine if water quality protection principles and policies are properly addressed in those documents. This does not, however, as suggested, require changes to CEQA or the General Plan and in no way infringes on the permittees' land use authority.

108. **Comment:** Part XII. New Development, Pg. 30, Item #7b. As to making broad based conclusory statements regarding imperviousness, we ask that the permit recognize a more sophisticated level of analysis. While we recognize the superficial conclusion that more imperviousness may mean more deposit of contaminants (such as car exhaust) and less natural absorption of runoff, to brand imperviousness as categorically evil ignores some significant planning and environmental objectives. There cannot be increases in density development without some increase in imperviousness. However, it is specifically higher density that is the key to concepts such as "smart growth" and more concentrated urban centers. This is not density for density's sake, but density for the sake of concentrating development and increasing the potential for conservation. To inhibit imperviousness across the board, without sufficient acknowledgement and consideration of density's potential to result in increased open space and conservation elsewhere is, at best, short-sighted and counterproductive. The Permit must allow for and encourage a more comprehensive consideration as to whether density and imperviousness are in reality an exchange for greater undisturbed preservation elsewhere.

Response: We are supportive of smart growth and low impact development concepts in designing new developments. However, the concept suggested, analogous to implementation of mitigation measures to allow disturbance of an environmentally

sensitive area, entertains the concept of an equal exchange; i.e. no net loss of a habitat or destruction of a sensitive area. When this concept is applied to urbanization in a previously undeveloped area, equal exchange is not achievable as there will always be a net loss of undisturbed land. We agree that in a comprehensive planning process, all factors must be considered and the projects should be designed to minimize any adverse environmental impacts.

109. **Comment:** Part XII, New Development, Pg. 31, Item #1, and Pg. 36, Item #4. We object to the Permit's "one size fits all" approach to implementation. Lumping all of these development categories into the same regulatory program ignores obvious thresholds that would result in development and regulatory savings without compromising the efficacy of the program. Specifically: 1) subjecting a 10-unit affordable infill housing project to the same regulatory standards as a 100,00 square-foot commercial shopping center defies logic. The foreseeable impacts of such projects are vastly different, necessitating different levels of regulation and enforcement. The Permit should reflect the obvious realities. 2) The Permit should distinguish between respective land use categories and the types of contaminants of concern associated with such land uses. To subject all land uses across the board to a one-size fits all regulatory mandate misdirects precious resources in unnecessary ways.

Response: These requirements are consistent with other MS4 permits recently adopted by the Santa Ana, Los Angeles, and the San Diego Regional Boards and recent State Board decisions. The issue had been subjected to intense scrutiny during the SUSMP process at the Los Angeles Regional Board. The Los Angeles SUSMP requirements and the San Diego MS4 permits were appealed the State Board. Please see State Board Orders WQ 2000-11 and WQ 2001-15. The State Board has deemed the SUSMP requirements as MEP.

110. **Comment:** Part XII. New Development, Pg. 32, Item 1g. The State Board expressly rejected the inclusion of environmentally sensitive areas (ESAs) as a "development category" in Order WQ 2000-11. In particular, the State Board held that the proposal to include ESAs was inappropriate for three reasons: (1) the proposal lacked meaningful application thresholds; (2) such areas are already subject to "extensive regulation under other regulatory programs"; and (3) ESAs are not a "development category." (SWRCB Order WQ 2000-11, pp. 24-25[hereinafter "SUSMP Order"].)

Response: When the State Board withdrew Environmentally Sensitive Areas (ESAs) as a priority development project category from the LARWCB SUSMP in Order WQ 2000-11, Regional Boards were given the discretion of adding Environmentally Sensitive Areas in future permits as long as a size threshold is provided. Section XII.B.g of the proposed Permit provides a size threshold of 2,500 square feet.

111. **Comment:** Part XII. New Development, Pg. 33, Item #2a. This portion of the Permit attempts to override the General Construction Activities Stormwater Permit by requiring BAT/BCT compliance. The Clean Water Act (CWA) dictates that Municipal stormwater permits require BMP compliance to the MEP, while the GCASP permit legally requires BMP compliance with BAT/BCT. This requirement should therefore be deleted as being in noncompliance with the CWA.

Response: This language is the same as in the Orange County MS4 permit and is in compliance with the CWA. Consistent with the state storm water General Permits for industrial and construction activities, onsite or watershed-based structural BMPs included in the permittees' WQMP should reduce pollutants in storm water discharges to the BAT and BCT levels and any more stringent controls necessary to meet water quality standards.

112. **Comment:** Part XII. New Development, Pg. 33, Item #2b. To provide clarification, this statement should read "direct" discharge.

Response: This statement refers to all discharges of a listed pollutant to an impaired water body on the 303(d) list, not just direct discharges.

113. **Comment:** Part XII. New Development, Pg. 33, Item #3. The implementation of regional and/or watershed management programs is the most effective means of dealing with our storm water runoff water quality concerns. Regional solutions offer the following advantages over the site-by-site approach: 1) teamwork "buy in", 2) potential for grants to fund capital costs, 3) economies-of-scale which provide opportunity to cost-effectively address pollutants of concern, 4) ability to establish maintenance districts and 5) large-scale solutions which can be planned and modified to address future regulations (i.e., TMDLs). For these reasons, it is imperative that this Permit provide every opportunity for the regional solutions to be developed and submitted to the executive officer for approval. The San Bernardino municipalities have not even begun regional treatment solution discussions. These discussions take a tremendous amount of time due to the potential conflicts that need to be worked out. These conflicts include establishing stakeholder involvement, locating regional solutions, securing land rights (if necessary), designing regional facilities and providing funding mechanisms for both capital and ongoing maintenance costs, etc. As such, we request that the second line of this paragraph be changed to the following: "The permittees shall submit a revised WQMP to the Executive Officer by October 1, 2004. This revised WQMP shall meet the goals proposed in Section XII.B.2, above, and provide an equivalent or superior degree of treatment as the sized criteria outlined below."

Response: The timeframe will be adjusted to be consistent with the lead-time included in the MS4 permit for Orange County. The current language in the draft permit provides

flexibility to the permittees for regional treatment systems or to use the specified numeric sizing criteria, while the proposed language provides only one option.

114. **Comment:** Part XII. New Development, Pg. 33, Item #3. We object to the assumption that "structural BMPs" will be necessary in all cases to address water quality issues. Other non-structural BMPs may be sufficient to meet water quality needs. We request the removal of the word structural from this requirement. We also request that new development and redevelopment be clarified as it was in the Orange County Permit. A footer was included with the Orange County Permit that reads: "Where new development is defined as projects for which tentative tract or parcel map approval was not received by July 1, 2003 and new redevelopment is defined as projects for which all necessary permits were not issued by July 1, 2003. New development does not include projects receiving map approvals after July 1, 2003 that are proceeding under a common scheme of development that was the subject of a tentative tract or parcel map approval that occurred prior to July 1, 2003." The July 1, 2003 date should obviously be extended for the San Bernardino Permit, since this Permit will be adopted several months after the Orange County Permit. We suggest changing the date to December 31, 2003.

Response: A footnote has been added for clarification. See comment above on the date change.

E. COMMENTS FROM MANATT/PHELPS/PHILLIPS – DATED FEBRUARY 7, 2002

115. **Comments:** As written, the Permit continues to define the maximum extent practicable ("MEP") standard as the maximum extent "possible." At the January 23, 2002 public workshop on the Permit, the Santa Ana Board agreed on the record to modify this definition so that it will now be defined as the maximum extent "feasible." The Santa Ana Board also agreed to ensure that the definition of MEP is limited to that which is technologically and fiscally feasible, thus making this Permit consistent with the MEP definition found in the Santa Ana Board's North Orange County Permit.

Response: The MEP definition has been changed to "maximum extent feasible" to be consistent with the Orange County Permit.

116. **Comments: a)** Under the MEP standard, the Santa Ana Board must take into account societal, economic and technological considerations. It is clear from the content of the Permit that the Santa Ana Board has not fully considered these factors. To meet the MEP standard, the Santa Ana Board must demonstrate that the permit requirements can actually be accomplished before requiring certain standards in the permit. b) Further, the Santa Ana Board must also demonstrate that the permit's requirements are economically feasible. It must consider how requiring strict compliance will affect particular local and regional needs, including affordable housing, attracting and retaining local businesses, and encouraging re-development of urban areas. c) Finally, it is important that the Santa

Board consider how the permit's prohibitions will affect local government's ability to effectively manage local land use and planning.

Response: a) There are many issues that require consideration in formulating and implementing regulations. Commonly, collective terms such as societal, economic, and technological considerations are used for those issues that are not the major focus of the regulation. In our evaluation of the BMPs in the WQMPs to be submitted by the permitees, factors such as those above will be considered with respect to water quality effects. b) Neither the Water Code nor federal regulations compel reliance on any particular form of economic analysis in the implementation of requirements based on the MEP performance standard; the admonition quoted from 64 Fed. Reg. 68722 & 68732 calls for flexible interpretation of MEP based on site-specific characteristics and "cost considerations as well as water quality effects…" Thus, while the regional board is advised to consider costs as a factor in determining the reasonableness or practicability of requirements, there is no state or federal mandate for a more formal analysis. c) The permittees are required under CEQA to consider environmental issues in their land use decisions. The permit simply provides guidance on how water quality issues are to be addressed on CEQA reviews and land use planning.

117. **Comments:** The Coalition is concerned that the Permit as written improperly infringes on local governments' land use and planning authority in direct contradiction of federal and state law. Under federal and state law, local land use and planning issues are left to the sound discretion of the local authorities. This is because these local governments are knowledgeable and sensitive to the particular needs of their unique area and population.

By imposing mandatory requirements on the permitting and approval of new development and redevelopment projects, the Santa Ana Board improperly infringes on local governments' land use and planning authority.

Response: The permittees are required under CEQA to consider environmental issues in their land use decisions. The permit simply provides guidance on how water quality issues are to be addressed on CEQA reviews and land use planning as well as how they may comply with environmental requirements in the exercise of their land use authority. This in no way infringes upon the local land use authority.

118. **Comments:** These mandatory requirements will make the development of new projects in San Bernardino County much more expensive. It is possible that many redevelopment projects will be too cost prohibitive under the Permit thereby inhibiting the economic growth of the region. Instead of containing mandatory requirements, the Permit should simply provide guidance to permittees as they approve and permit development projects. The Coalition requests that the Santa Ana Board revise these requirements so that they are made consistent with state and federal law.

Response: SUSMP-type requirements for new development and significant redevelopment have been deemed as MEP by the State Board and are consistent with state and federal laws (See State Board Order WQ 2000-11). These requirements are consistently being included in the MS4 permits issued throughout the State. Therefore, the inference that new projects in San Bernardino County would be more expensive than in other parts of the State due the requirements proposed in this permit is not valid.

119. **Comments:** The Coalition agrees with the concerns raised at the January 23, 2002 public workshop by the Building Industry Association of Southern California ("BIASC") concerning the impacts of the SUSMP on residential projects. The Coalition strongly urges that the Santa Ana Board work with the BIASC and others to address these concerns before issuing a final Permit.

Response: Please refer to our response to BIASC's comments.

120. **Comments:** Although the Permit acknowledges regional/watershed solutions, we are still heavily concerned that it does not go far enough in promoting this approach. Specifically, it does not provide ample opportunity nor time for these regional/watershed solutions to be developed and submitted to the executive officer for approval. The San Bernardino municipalities and stakeholders have not even begun the process for determining regional solutions, while Orange County municipalities and stakeholders have not only begun the process, but have made great strides toward achieving this goal. This process can be very time consuming due to the many factors requiring resolution. These include stakeholders involvement, locating regional solutions, securing land rights (if necessary), designing regional facilities, and providing funding mechanisms for both capital and ongoing maintenance costs. Therefore, we request that the wording pertaining to regional and/or watershed management programs on page 33 be revised to read as follows: "The Permittees shall submit a revised WQMP to the Executive Officer by October 1, 2004. This revised WQMP shall meet the goals proposed in Section XII>B.2, above, and provide an equivalent or superior degree of treatment as the sized criteria outlined below."

Response: The first draft of this permit was released in August of 2001 that included the new development requirements. The permittees were aware of the SUSMP requirements developed by the Los Angeles Regional Board and the directive from the State Board to consider SUSMPs as MEP for purposes of drafting MS4 permits. During the workshops for the Orange County MS4 permit, the Regional Board made it very clear that the three MS4 permits in the Region should have similar requirements for new developments. Thus, the permittees were fully aware of these requirements. Not having a regional solution by the date that the SUSMP-type requirements go into effect does not necessarily preclude project proponents from coordinating and implementing a regional solution at a later time. The San Bernardino County Permittees will have the same lead-time as the Orange County permittees.

F. COMMENTS FROM NRDC DATED FEBRUARY 8, 2002

121. **Comment:** Compliance Assurance. The Regional Board's enforcement and audit program for municipal entities has been virtually non-existent during the last ten years. This violates the terms of the State's agreement with the USEPA allowing the Regional Board to implement this NPDES permit program – and is also a violation of the Clean Water Act. While recent budget augmentations have improved Regional Board capacity in this regard, it is unclear whether the Regional Board can meet its own minimum inspection and audit requirements: a minimum of one annual inspection and audit of each municipal entity during each year of the term of the new Permit. Does the Board intend to meet these requirements and, if so, how will it do so?

Response: The five-year workplan established a framework and setup goals and objectives for the State's storm water program. The goals and objectives were predicated upon full funding to implement this program. One of the program goals was to evaluate the municipal program annually through offsite and onsite audits. During the last eleven years, even with the limited resources allocated for the storm water program, we conducted both offsite and onsite audits and have taken a number of enforcement actions against municipalities for violations of the MS4 permits. A recent audit of the Regional Board's NPDES program by US EPA (p. 16-17) states, "RB8 conducts annual compliance inspections of their MS4 permittees" and on page 25 it states, "RB8 has developed a protocol for in-depth audits for the MS4 permittees". Therefore, NRDC's assumptions are not based on facts. Last year, the storm water program budget has been augmented. A review of our files will indicate that frequency of our municipal program audits and our enforcement activities have significantly increased with the budget augmentation." The Board intends to optimize use of its resources to meet or exceed its work plan commitments.

122. **Comment:** Draft Permit. Overall, we are very concerned that the draft is far too general. Compared to the L.A. Municipal Storm Water Permit, for example, the draft Permit is nearly half as short. In many respects, the Draft Permit should be modified so that it, at bare minimum, comports with the L.A. Permit.

Response: At the request of the Regional Board, a comparison matrix was prepared to compare the major components of the three recent MS4 permits from Southern California Regions (San Diego Region's south Orange County permit, Santa Ana Region's north Orange County permit and the Los Angeles Region's Los Angeles permit). The matrix only compared the major components; it was not a word-by-word comparison of the permits. The north Orange County permit is similar to the San Bernardino County draft permit. Therefore, this comparison matrix is applicable to the San Bernardino County draft permit. This matrix indicates that the core requirements of the three permits are very similar. Implementation of the NPDES municipal storm water requirements allows

for differences from location to location. Although the storm water issues are similar across the board, the magnitude of the existing problem/sources in San Bernardino County is different than L.A. Hence, this permit specifies detailed performance standards in critical areas but it also provides flexibility to the permittees to propose programs and policies that may be regional or site-specific.

123. **Comment:** TMDLs. The Clean Water Act and Porter-Cologne Act require that waste load allocations be included in TMDLs. Hence, it is essential that waste load allocations for each permittee be included in the permit for each of the TMDLs that has been adopted by the Regional Board. Therefore, the following language must be added to the Draft Permit: "The Permittees shall revise their Municipal Storm Water Management Program (MSWMP), at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies."

Response: Section XIX.2.d of the permit specifies re-opener provisions. The permit will be modified or reissued to include implementation of the TMDL requirements developed prior to permit expiration.

124. **Comment:** Anticipated Improvement in Water Quality. The Fact Sheet states that "[I]t is anticipated that…the goals and objectives of the storm water regulations will be met, including protection of the beneficial uses of all receiving waters." Fact Sheet at 13. Unfortunately, we could not find any evidence to support this expectation in the Draft Permit; indeed, the Fact Sheet notes that water quality improvements have not been detected. *Id.*

Response: The annual reports including monitoring reports submitted by the permittees for the last decade identified the amount of waste/debris collected from street sweeping, composition of storm drain clean outs, spills responded to, illegal discharge complaints investigated (and possibly deterred from happening again), construction/industrial, and commercial facilities inspected, etc. Such programs have clear or intuitive water quality benefits and will continue to do so with the additional requirements specified in the permit. Uncertainties in quantifying the water quality benefits from these programs have been a challenge due to the factors mentioned in this section of the Fact Sheet. See also comment 127 below.

125. **Comment:** Pollution in Storm Water. Local studies in Southern California have established that urban runoff has very serious impacts in rivers, streams, and the ocean. The L. A. County Municipal Storm Water Permit provides multiple references to studies and data regarding storm water impacts, and this information should be covered in the

draft Permit, as well. We suggest revising the findings of the Permit to more completely reflect the known impacts of polluted runoff on receiving waters.

Response: We agree that there are a lot of publications on the impact of urban runoff on receiving water quality. A number of these studies are referenced in the Fact Sheet and the findings. We agree that it is not an exhaustive list; additional references is not going to strengthen the permit.

126. **Comment:** Discussion of Monitoring Results. The Draft Permit lacks any meaningful discussion of monitoring results obtained under the previous two permit terms. The Draft Permit should be revised to discuss particular pollutants of concern as identified in current monitoring efforts by the permittees.

Response: Additional discussion is included regarding the monitoring results. The Fact Sheet also identifies the monitoring site locations and land use categories. The ROWD and the annual reports include a discussion on pollutants of concern.

127. **Comment:** Lack of Anti-degradation Analysis. The Draft Permit does not include an anti-degradation analysis, contrary to legal requirements. The stated basis for excluding such analysis is that the Permit will improve water quality and that the storm water discharges are consistent with state and federal anti-degradation requirements. This is far from clear……The Board's present finding that "loading rates" will be reduced is devoid of support and cannot stand on its own; in addition, the corollary finding that, therefore, the quality of receiving waters will improve does not follow necessarily. As per SWRCB Order No. 90-5, anti-degradation analysis is required.

Response: The storm water monitoring results for San Bernardino County for the last ten years indicate no degradation of water quality resulting from discharges regulated under this permit. The proposed Permit includes additional requirements to control the discharge of pollutants. Based on available evidence and additional requirements specified in this Permit, there is no reason to believe that water quality degradation will take place upon implementation of the provisions of the proposed Permit and other programs (MSWMP, monitoring program) and policies and programs of the San Bernardino County storm water program. NRDC's assertion that WQ 90-5 is applicable to this Permit is invalid because, unlike the permits discussed in WQ 90-5, this Permit does not allow the discharge of toxic pollutants in greater quantity than had been allowed in previous permits. Therefore, no further anti-degradation analysis is necessary.

128. **Comment:** Deferral of Compliance. In many respects, the Draft Permit would delay compliance with many provisions for a period of one to three years……This approach does not assure that an adequate storm water program will be implemented concurrent with the issuance of the permit itself. Given that this is the third iteration of the

municipal permit, there is simply no justification for such extraordinary delays, especially as applied to the most basic storm water control actions. This deferral is in violation of 40 CFR 122.47 and 124(i).

Response: The requirements specified in the 1990 and 1996 Pemits have been met. The Permittees have programs in place to address illegal discharges/illicit connections. The adequacy of Permittees' legal authority need to be periodically reviewed and updated, hence this continues to be a permit requirement. There are time schedules included in the Permit for further improvements to the existing programs in consideration of the fact that the municipalities need to obtain additional funding through a budget process. Sections 122.47 and 124(i) apply to the issuance of permits to "new sources". As recognized by the State Board, the issuance of a MS4 permit to a municipality does not constitute an issuance to a "new source".

129. **Comment:** Finding Regarding Violation of Water Quality Standards. There is no evidence in the record to support the claim in Finding 38 that the nature of storm water discharges requires any additional time to determine whether these discharges are causing or contributing to violations of water quality standards. Storm water controls have been in place for a decade and monitoring data and other public documents demonstrate the storm water discharges, at a minimum, are contributing to water quality objective violations. There is also no evidence to demonstrate that the "iterative" process described to assess the contribution of storm water to these violations has been implemented or that any additional BMPs have been designed or implemented to correct violations.

Response: This finding refers to the receiving water limitations. Having storm water programs/ordinances in place do not guarantee compliance from all potential dischargers nor prevent accidental spills. Pollutant flows into the storm water conveyances are neither homogeneous nor static. Existing sampling/monitoring programs are neither conducted continuously nor in real time. There is a delay in the feedback to the permittees and the Regional Board staff as to concentration levels, source identification, and to determine if there is a BMP failure or lack of BMP implementation. The "iterative" process outlined is appropriate and the language is consistent with the language approved by the US EPA, the State Board, and is consistent with other MS4 permits.

130. **Comment:** Finding Regarding Failure to Include Numeric Effluent Limits. There is no evidence to support the claim in Finding 41 that numeric effluent limits are not appropriate because the "impact of the storm water discharges on the water quality of the receiving waters has not yet been fully determined." As noted: (1) monitoring has been conducted for more than ten years; (2) there is evidence connecting storm water runoff to receiving water limitations in the region; (3) the section 303(d) List notes that runoff contributes to the impairment of many receiving waters as does the Permit itself; and (4) federal regulations required that the permittees provide in 1990 specific information on annual pollutant loads and event mean concentrations for pollutants. For all these

reasons, significant evidence exists to prove that storm water has the reasonable potential to cause or contribute to the violation of applicable water quality standards. Accordingly, numeric effluent limits are mandatory under 40 CFR Section 122.44. The Regional Board must make this finding and, further, must among other things conduct a reasonable potential analysis and thereafter insert numeric effluent limits in the Permit.

Response: The issue of numeric effluent limits in MS4 permits has been appealed and decided by the State Board and the courts. Both the State Board (Memorandum from Craig Wilson to Ed ward C. Anton dated 03/15/01) and the Ninth Circuit Court of Appeals (9th Cir. 1999, 191 F.3d 1159) have determined that numeric effluent limits are not required in MS4 permits.

131. **Comment:** Findings Characterizing the Permittees' "State-of-Mind." (Finding 48 stating that "the permittees recognize the importance of watershed management…) There is no basis for the Board to characterize the belief of "state-of-mind" of any permittee. The Board has no evidence to support such findings; thus they are not appropriate.

Response: The permittees from San Bernardino, Riverside, and Orange Counties have and continue to support and cooperate with regional monitoring efforts such as the regional monitoring programs conducted with SCCWRP. The San Bernardino County permittees have stated in the ROWD their intent to consider options to work with Riverside and Orange counties in other regional water quality monitoring efforts.

132. **Comment:** Permit Section I, Responsibilities of the Principal Permittee. Unlike the recently adopted Orange County Permit and the requirements in Section II of this permit applying to "Responsibilities of the Co-Permittees," this section is missing a provision requiring the principal permittee to "Pursue enforcement actions as necessary within its jurisdiction to ensure compliance with storm water management programs, ordinances and implementation plans including physical elimination of undocumented connections and illegal discharges." Why is this provision omitted for the Principal Permittee, the County? As there appears to be no reason for this omission, this language should be added into Section I.

Response: The recommended language has been added into Section I.

133. **Comment:** Permit Section III, Discharge Limitations/Prohibitions, Paragraph 3. The Board cannot delegate authority to the Executive Officer to modify the Permit. Water Code Section 13223. This paragraph violates this provision because it allows staff to modify the terms of the Permit with reference to a basic element, discharge exemptions. Because only the Regional Board can modify a permit, this reference should be stricken.

Response: This language has been changed.

134. **Comment:** Permit Section III, Paragraph 6. This section fails to comport with the Clean Water Act requirement to prohibit the discharge of non-storm water discharges into storm sewers. 33 U.S.C. Section 1342(p)(3)(B)(ii). This section inserts a "practicability" exemption that is unlawful. Note that the prohibition of non-storm water discharges is contained in a separate statutory subparagraph from the requirement to reduce the discharge for pollutants in storm water to the maximum extent practicable.

Response: The requirement is for the discharge of pollutants and therefore, the practicability standard applies.

135. **Comment:** Permit Section V, Receiving Water Limits. As discussed further in Section III of these comments, there is no basis for the Board to provide that compliance with receiving water limitations can be maintained by implementing the ROWD because there is no evidence that the ROWD is designed to assure compliance with those limits. References to the ROWD should be stricken and the permittees should be directed to achieve compliance by implementing a storm water management program that is designed to assure discharges from the MS4s do not cause or contribute to a violation of water quality standards and also meet the MEP standard. 40 CFR Section 122.44. In this regard, we suggest adding the following language to paragraph 3 of Section IV (Receiving Water Limitations), taken from the Orange County Permit: "The ROWD and its components shall be designed to achieve compliance with receiving water limitations. It is expected that compliance with receiving water limitations will be achieved through an iterative process and the application of increasingly more effective BMPs."

Response: Where appropriate in this section, references to the ROWD was replaced with MSWMP and its components. However, reference to the ROWD in IV.3 was inadvertently left unchanged. This will be corrected in the revised Order. Recommended language has been added into Section V, Paragraph 3.

136. **Comment:** Permit Section VI, Legal Authority. Paragraph 1 states that "permittees shall maintain and enforce adequate legal authority to control contribution of pollutants to the MS4 by storm water discharges…." There is no reason to limit this provision by the clause "by storm water discharges." Rather, the paragraph should read: "permittees shall maintain and enforce adequate legal authority to control contributions of pollutants to the MS4."

Response: The clause "by storm water discharges" has been deleted from Section VI, Paragraph 1.

137. **Comment:** Permit Section VII, Illegal and Illicit Discharges. The draft Permit does not contain any overarching performance standard directing specific, affirmative actions to eliminate illegal and illicit connections. Instead, the draft Permit requires the permittees only to continue to prohibit these connections and activities "through their ordinances,

inspections, and monitoring programs;" Draft Permit at 21; and specifies a time frame in which investigation and remedial action must occur once a problem activity or connection is discovered. However, the draft Permit does not contain any express schedule of targeted actions, such as inspections. Also, the draft Permit does not contain any program to catalogue (and Update on an ongoing basis) both permitted and non-permitted connections to the MS4 system, a step that is a predicate to effective management of the system and interdiction of illicit and illegal activities. By contrast the L.A. Permit requires permittees to "eliminate all illicit and illegal discharges…." L. A. Permit at 51-53. Further, that permit sets forth a specific schedule of inspections and also requires that a full database be maintained that identifies all permitted and un-permitted connections to the storm drain system. *Id.* The San Diego Permit similarly contains affirmative requirements to "actively seek and eliminate illicit discharges and connections" and "eliminate all detected illicit discharges….immediately." San Diego County Permit at 36 [Section F.5]. The draft Permit should be revised to contain requirements consistent with these other third round MS4 permits in the region.

Response: The permittees have completed a comprehensive reconnaisance survey of their storm drain systems for illicit connections and have taken corrective measures for those found. Their current proposal is to focus on locating and preventing or correcting illicit connections as part of their plan check and building inspection process. The permit requires to correct any newly discovered illicit connections within 60 days. Record keeping and reporting requirements have been added to Section VII, Paragraph 1.

138. **Comment:** Permit Section XII, New Development. This section of the Permit is inconsistent with the MEP standard because it fails to include a program requiring the installation of structural best management practices as required by the SWRCB Order WQ 2000-11 ("Order"). This section of the Permit is illegal and contrary to the express direction of the Chief Counsel of the State Board who expressly notified all Regional Board Executive Officers that: "Municipal storm water permits must be consistent with the principles set forth in the Order. The Order finds that the provisions of the SUSMPs, as revised in the Order, constitute MEP." ….. Accordingly, the Permit must require that a SUSMP program equivalent or more stringent than that approved of by the State Board be implemented immediately by the permittees. In this connection, there is no inconsistency between the SUSMP and regional approaches to storm water pollution mitigation.

Response: As with the other MS4 permits adopted, the SUSMP type requirements in this permit has provided for a phase-in period to allow the permittees to develop a regional approach or to modify their existing procedures to implement the structural controls required by the permit. In the interim, the permittees will implement their proposed current new development program that also requires implementation of structural and non-structural controls. The time schedules for SUSMP-like requirements is consistent with other MS4 permits.

139. **Comment:** Draft Permit at 31-32. Retail gasoline outlets are conspicuous for their absence from this list; is there any reason that these facilities should not be included?

Response: See response to City of Ontario's comment 87 above. See also response to Comment 175 on the Orange County permit.

140. **Comment:** Paragraph B-2(a) states that "pollutants in post-development runoff shall be reduced using controls that utilize the best available technology (BAT) and best conventional technology (BCT). The latter clause impermissibly weakens this provision, which must read: "pollutants in post-development run-off shall be reduced to the MEP."

Response: This language mirrors the Orange County permit. Consistent with the state storm water General Permit, onsite or watershed-based structural BMPs specified in the permittees' WQMP should reduce pollutants in storm water discharges to the BAT and BCT levels and any more stringent controls necessary to meet water quality standards.

141. **Comment:** Permit Section XIII, Public Education and Outreach. This section of the Permit is also inadequate. Its principal provision requires only that the program "target 100% of the residents "over the five-year term of the Permit. However, effective public education program must make multiple and repeated impressions in order to be effective. While we strongly support the requirement in the draft Permit to require that 5 million required impressions actually measurably increase the knowledge and change the behavior of the targeted groups, the limited program described in the Permit is not enough to meet MEP. For example, the proposed L.A. Permit requires, among other things, 35 million annual impressions; education of 50% of all school children every two years; and the targeting of all retail gasoline and restaurant chains once every two years. LA County Permit at 25-27. The requirements of the public outreach and education program must, at a minimum, be equal to the conditions of other equivalent permits, such as the L.A. County Permit. No evidence is presented to demonstrate that the program required by the draft Permit meets the MEP standard, especially in light of evidence that the program is significantly less comprehensive than programs in the region being implemented by comparable entities.

Response: See response to Comment 112 on the Orange County MS4. Re: annual impressions per capita. The ROWD specifies an educational component targeting all of the Phase 1 facilities, automotive repair facilities and food service facilities for educational outreach and or inspection. Section 7 of the ROWD specifies various opportunities for education outreach including offering storm water presentation to 100 percent of 4^{th} or 5^{th} grade classrooms , and conducting a minimum 75% of those that accept, in combination with public participation program to involve and as source of potential assistance in the outreach effort elementary, junior high, high school student – as class projects, Boy Scout/Girl Scout troops, merit badge programs, eagle scout

projects, Boys and Girls Clubs, programs for troubled youths, and environmental organizations.

142. **Comment:** Permit Section XIV, Municipal Facilities & Inspections. The catch basin cleaning requirement of the Permit (80% per year) is inadequate. For many years, L. A. County and many other entities have cleaned 100% of the catch basins annually, prior to the rainy season. There is no evidence that the proposed 80% requirement meets the MEP standard. In addition, each permittee should be required to undertake a specific and detailed inspection of USEPA Phase I industrial facilities, automotive facilities and restaurants, as required by federal regulations. 40 CFR Sections 122.26(d)(iv)(A)(5) and (B)(1). The L.A. County Permit contains such provisions and should be used as an example. L. A. County Permit at 28-32.

Response: The draft permit specifies 100 % inspection requirement of open channels and catch basins and clean out of those that are more than 25% full of sediment/debris. We feel that this requirement is at least as effective as the LA County program as it will likely lead to repeat inspections and clean out of those areas that are generally more problematic. Section 3 of the ROWD discusses how the permittees will target General Industrial Permit (phase I) facilities, automotive facilities and food service facilities for educational outreach and/or inspection.

143. **Comment:** Permit Section XVIII, "Provisions." Paragraph 1, which provides that the permittees can demonstrate compliance with discharge limitations and receiving water standards by complying with the ROWD, is unlawful. Draft Permit at 38. There is no evidence that the ROWD is consistent with the MEP standard nor is there evidence that it has been designed to meet water quality standards. By contrast, other jurisdictions, such as the L.A. RWQCB, have established that a submitted storm water management plan is a minima and that, further, each permittee must assure that the plan complies with the program requirements set forth in 40 CFR 122.26 (d)(2) and, thereafter, implement the adequate plan in a manner consistent with the MEP. Accordingly, we suggest that the Board add the following language to the provisions of the Permit: "In addition to those specific controls and actions required by the terms of this Order and the ROWD, each permittee shall implement controls as are necessary to reduce the discharge of pollutants in storm water to the maximum extent practicable and so as to satisfy the other requirements of this Order."

Response: Recommended language has been added into Section XVIII, Paragraph 4.

144. **Comment:** Monitoring and Reporting Program No. 01-16. The permit's monitoring and reporting program is woefully inadequate. First, there is no showing that the program meets the MEP standard. Second, the monitoring requirements do not even appear to be set out in the program. Instead, the permittees are to submit a program for approval by

the Executive Officer at a later time. This is inappropriate. For instance, how is it justifiable to allow the permittees to determine the parameters selected for field screening and the number of monitoring stations and number of samples required. The Permit should set out at least a minimum monitoring program to apply to the entire county. Moreover, this program should be similar to and consistent with other monitoring programs under the other municipal storm water permits in the area…..At a minimum, the Board should include a program that includes all elements included by the Los Angeles RWQCB in its Monitoring and Reporting Programs for Los Angeles and Ventura Counties, which are good examples of more extensive and structured monitoring programs.

Response: We disagree that submittal of a program at a later time is inappropriate. The permittees have conducted a monitoring program for the last 10 years. It is appropriate to evaluate the data obtained from the program, other regional programs, ongoing TMDL efforts and re-evaluate the monitoring program. Development of an integrated monitoring program will maximize the funds and efforts invested. Coordinated effort will require time. The monitoring objectives specified in the monitoring and reporting program will dictate the number of monitoring stations, number/type of samples, location, etc. Language will be added to include a date by which the EO has to approve a monitoring program otherwise, the permittees will be required to conduct a monitoring program specified by the EO.

145. **Comment:** Municipal Facilities and Activities. With respect to requirements such as drain inlet cleaning, the frequencies required in the draft Permit pale in comparison to comparable jurisdictions. By contrast, the L.A. County Permit contains a substantially more detailed set of requirements, including SWPPPs for maintenance bases; baseline structural control requirements for maintenance bases; prioritized schedules for drain inlet cleaning (requiring some drains to be cleaned as frequently as monthly during the rainy season and all drains at least annually); updated stenciling on catch basins within 180 days of inspection; specified (as frequently as bimonthly) street sweeping; and municipal parking lot cleaning protocols. In contrast, the draft Permit contains very few detailed requirements. Instead, it provides extensive time schedules for the permittees to develop better plans for maintenance of municipal facilities. Again, this is a third round permit and should have already been dealt with in the ROWD. The Board should revise the Permit to include specific requirements and priorities, as well as specific schedules for storm drain cleaning, and ensure that these requirements will be complied with immediately, not 3 or 4 years from now.

Response: Drain cleaning has been addressed in comment number 142 above. Section 5 of the ROWD proposes development and implementation of site-specific pollution prevention plans for corporation yards and other municipal outdoor materials storage areas. In their December 11, 2000 letter responding to our comment on the ROWD, the permittees proposed to sweep streets/roads in residential zones at least twice each permit

year, with at least one sweeping during the pre-rainy season months of September to October. Commercial, industrial, and institutional zones, and along designated truck routes, will be swept at least once each quarter. We feel that this combination of BMPs, given prior data is a good starting point for this third term permit.

146. **Comment:** The Storm Water Management Program, as Described in the Report of Waste Discharge is Inadequate. There is no evidence that the Storm Water Management Program contained in the Report of Waste Discharge ("ROWD") for San Bernardino County has been designed to meet the MEP standard…..Similarly, there is no evidence that the ROWD has been designed to achieve water quality objectives and to assure that regulated discharges do not cause or contribute to a violation of those objectives…. In sum, the ROWD describes a program that would be inadequate even if it were a second-generation effort instead of a third generation permit approach. There is no justification for San Bernardino County to be so far behind the rest of southern California…..At a minimum, the provisions of the Draft Permit must be clarified to state that the ROWD constitutes a baseline program, but not one that comports with MEP or the requirement that discharges not cause or contribute to an exceedance of water quality standards. As such, in addition to adding the suggested language to Section XVIII (Provisions) of the Permit, the Board should delete all references to the DAMP as approved or as adequate for meeting the requirements of section 402(p) of the Clean Water Act.

Response: Changes have been made to incorporate the suggested language.

III. COMMENTS ON THE FOURTH DRAFT (FEBRUARY 13, 2002)

A. NRDC Comments – Dated February 25, 2002

TMDL Implementation:

147. **Comment:** TMDLs must be implemented by inclusion of WLAs in NPDES permits for point sources. See 40 CFR Section 122.44(d)(1)(vii)(B); see also comments dated February 8, 2002. However, in stark contrast to all of the other municipal storm water permits in southern California, including most notably the Orange County permit issued by this Board in January, the Draft Permit lacks the appropriate language to address TMDLs….It is not sufficient to assume that the stakeholders will cooperate in implementing the TMDLs...

Please delete the following language from Finding 18 on pages 6-7 of the Draft Permit: "It is expected that once the TMDLs and an implementation plan are developed, the stakeholders will cooperate and implement the plan. To avoid any duplicative efforts, this permit does not include any further requirements based on TMDLs. However, this

permit may be reopened to include TMDL implementation, if other implementation methodologies are not effective."

Response: Please see the revised language.

148. **Comment:** Further, in addition to the deletion of the above language from the findings, a new provision must be added to the Draft Permit, similar to an identical provision in the Orange County Permit, to provide for TMDL implementation through the Permit: "The Permittes shall revise their Municipal Storm Water Management Program (MSWMP), at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

Response: Similar language added to Section XVI.3 , Program Management.

SUSMP Requirements (Section XII.B)

149. **Comment:** Applicability Cutoff: Concern about footnote 5 on page 33 of the Draft Permit opens up a huge loophole in the program and also will most likely cause a race for tract map approval before December 1, 2003 to avoid SUSMP requirements. The tract map approval step generally is not sufficiently "close to" the beginning of actual construction of the project. Rather, tract map approval is a very early step in a development project. As a result, thousands of potentially covered projects will be built without the water quality protection offered by the SUSMP provisions. A much more relevant point in the development process to insert this type of cutoff would be the issuance of building or grading permits which occur much closer to the time when construction actually begins on a project. See e.g., San Diego Municipal Storm Water Permit. Revise footnote 5 to refer to the date of issuance of building or grading permits as the cutoff, rather than tract map approval.

Response: We feel that the cut-off date as the date of approval of tentative tract/parcel map is advantageous. This provides an opportunity for the municipalities to require treatment or infiltration devices and long-term operation and maintenance responsibilities included as part of the local conditions for project approval. Similar cut-off dates were included in our Construction Permit for San Jacinto Watershed and the Orange County MS4 permit. Based on our experience with these permits, it does not appear that such a cut-off date will create any sudden rush to get developments approved.

150. **Comment: Definition of Significant Re-Development:** The definition of "significant re-development" contains a potential major loophole. The proposed definition includes the "addition" of 5,000 or more square feet of impervious surface on an already

developed site. Arguably, this definition is intended to include the replacement of impervious surfaces on the site. However, for clarity, the definition should be revised to state that this includes "the addition *or replacement* of 5,000 or more square feet of impervious surface…" This revised definition fully captures what is meant by "redevelopment" and is consistent with the State Board's ruling on new and redevelopment standards. See SWRCB Order 2000-11.

Response: The current language is consistent with State Board Order No. 2000-11. It states that the redevelopment projects should be subject to the SUSMPs only if they result in creation or addition of 5,000 square feet of impervious surfaces (Order No. 2000-11, III.7). However, the draft permit has been revised to include the clarifications included as amendments to SUSMPs in that Order.

151. **Comment:** Discharges to Impaired Waters: The Permit should contain a requirement that "pollutants in post-development runoff shall not be discharged to impaired waters at levels that exceed pre-development levels."…The current language in the permit, however, states that a "discharge of any listed pollutant to an impaired waterbody on the 303(d) list shall not cause an exceedance of receiving water quality objectives." Draft Permit at 33 (Sec. XII.B.2.b). This should be replaced with the suggested language above or at the bare minimum, be revised to say "cause or contribute," rather than just "cause" to be consistent with the Clean Water Act and its implementing regulations.

Response: Please see the changes to Section XII.B.2.b. Other suggested changes are not consistent with State Board Order No. WQ 2001-06.

152. **Comment**: Finding Number 38: The current language of Finding 38 is inconsistent with the Clean Water Act. The language of the second sentence currently reads "the permit includes a procedure for determining whether storm water discharges are causing exceedances of receiving water limitations…" This language should be revised to say "causing or contributing to exceedances of receiving water limitations…" This revision is necessary for consistency with the Receiving Water Limitations section of the Draft Permit (Section IV) as well as for consistency with the Clean Water Act.

Response: This finding has been changed.

153. **Comment:** Section XIII, Public Education and Outreach: While we support the addition of paragraph 6 in section XIII of the Draft Permit, which requires permittees to determine the best mechanisms for providing educational materials to business, the Board should also set forth a timeframe to ensure that the mechanisms, once determined, are utilized. In other words, the permit should contain an additional sentence that sets forth a deadline for using these mechanisms to provide the materials to businesses within the Permit term.

Response: A time schedule for implementation has been added.

154. **Comment:** Section VII, Litter, Debris and Trash Control: The Draft Permit currently encourages permittees to characterize trash, determine its main sources and develop and implement BMPs to control trash in urban runoff. Draft Permit at 22. This is a very weak provision that is unlikely to result in any headway on the problem of trash in our waterways. Why not require the permittees to take these additional steps along with reviewing their litter ordinances? At the very least , the permittees should be required to characterize the trash and determine its main sources and submit these findings to the Board. Only by making this provision a requirement will the Board be able to gather consistent data from all the permittees regarding the problem of trash in urban runoff. As this is an important problem, a requirement is justified.

Response: The draft permit now requires the permittees to characterize trash and determine the sources.

155. **Comment:** Section XV, Municipal Construction Projects/Activities: The Draft Permit appears to regulate discharges only from municipal construction projects over five acres. See draft Permit at 38. It is unclear from this language whether any conditions are applicable to construction sites between one and five acres, or whether discharges from municipal construction projects under five acres are completely prohibited. The Draft Permit should clarify this point. In addition, unless these discharges are completely prohibited, the Draft Permit should be revised to add provisions to ensure that construction activities between one and five acres are completely prohibited. The Draft Permit should clarify this point. In addition, unless these discharges are completely prohibited, the Draft Permit should be revised to add provisions to ensure that construction activities between one and five acres properly obtain coverage under a general construction permit once these requiremetns become effective for smaller construction sites on March 10, 2003. Because the Draft Permit will not expire until 2007, it is important to include these provisions in the Permit so that these activities are properly regulated after March 10, 2003. This could be accomplished by including the following language: Each permittee shall obtain coverage under a statewide construction sites for projects between one and five acres not later than March 10, 2003.

Response: The language in the draft permit has been revised to include construction activities on one to five acres.

B. RESPONSE TO COMMENTS FROM THE CITY OF ONTARIO, DATED MARCH 12, 2002

156. **Comment:** Section VII - Item 2 is inconsistent with reporting requirements in Section VIII - Item 5, Section IX - Item 8, and Section X - Item 8. Request that the same wording for 24 hour verbal notification to the Regional Board be used as is written in

Section VII - Item 2, for all sites, and that all written reports be required to be submitted within 10 days for all sites (instead of 10 days for some and 5 days for others). Request a reason for the requirement to submit a written report within 30 days of the incident for commercial sites that do not pose a threat to human health or the environment, but not for industrial or construction sites.

Response: Deadline for written reports has been changed to 5 days. The requirement to submit a written report within 30 days for commercial sites has been deleted. The information submitted as part of the data base will be sufficient for incidences of non-compliance that do not pose an immediate threat to human health or the environment.

157. **Comment:** Section X, Item 5: Please clarify if the listed commercial businesses in the permit, Section X.1.a-j, are all considered to be high priority sites.

Response: No, the list provides types of commercial establishments that need to be inventoried. Section X.2 provides guidance on how these commercial sites are to be prioritized.

158. **Comment:** Section XII, Item A. 4: Fix typo in bold: "The permittees shall review and revise the storm water management program and implement any changes in the program, as necessary in order to require industrial/commercial site dischargers to reduce pollutants in runoff from new and existing industrial/**commercial** sites."

Response: Corrected.

159. **Comment:** Section XII, Item A. 4 (c): Fix typo in bold: "Monitoring and inspection of industrial/**commercial** sites."

Response: Corrected.

160. **Comment:** Section XII, Item 6 end of first paragraph: Fix typo in bold: **"**All actions found necessary shall be completed within one year of issuance of **thir.**"

Response: Corrected.

161. **Comment:** Section XII, Item 9: Fix typo in bold: "By September 1, 2003, the permittees shall review and, as necessary, revise their current grading/erosion control ordinances in order to reduce erosion **erosion** …"

Response: Corrected.

C. COMMENTS ON THE FEBRUARY 13, 2002 DRAFT FROM RICHARDS, WATSON, GERSHON – ATTORNEYS-AT-LAW ON BEHALF OF THE CITIES OF RANCHO CUCAMONGA AND UPLAND, DATED MARCH 15, 2002

162. **Comment:** The Draft Permit has been developed without compliance with California's Administrative Procedure Act. The Regional Board and the State Board attempt to achieve statewide consistency with respect to municipal stormwater permits and thus trigger the rulemaking process.

Response: The comment asserts that the issuance of the MS4 permit constitutes a "regulation" and is subject to the processes set forth in the Administrative Procedures Act (Govt. Code, § 11340, et seq.). This is not the case. In adopting the Administrative Procedures Act (APA), the Legislature specifically exempted the adoption of permits by the State Board and regional boards. Government Code section 11352 states very plainly: "The following actions are not subject to this chapter: … (b) issuance, denial, or revocation of waste discharge requirements and permits pursuant to sections 13263 and 13377 of the Water Code . . ." The adoption of the proposed NPDES permit is an action pursuant to Water Code section 13377. Accordingly, the issuance of the proposed MS4 permit is not subject to the APA processes for rulemaking. Furthermore, the MS4 permit implements the existing requirements of the Clean Water Act and regulations promulgated by the United States Environmental Protection Agency.

Contrary to the argument that the permit is a "rule of general application," in adopting the exception set forth in Government Code section 11352, the Legislature recognized the unique nature of regional board waste discharge requirements and permits. The adoption of waste discharge requirements and permits constitutes an action that applies solely to the named dischargers who are subject to the permit. Moreover, the process that the boards follow to consider adopting a permit complies with legal notice, comment, and response requirements. Given the high volume of NPDES permits and Waste Discharge Requirements, and the comparatively cumbersome process under the APA's full rulemaking process (which can take a year or longer), it is easy to see that the Legislature intended to apply a more streamlined process to the adoption of permits and WDRs, that still provides full due process protections to all those concerned.

Finally, the State Board has previously dispensed with this same comment in its SUSMP Order (Order WQ 2000-11). There, it was determined that since the Regional Board tailored the permit requirements to the needs of the Los Angeles County; only the named permittees are governed by the permit; and they as well as any other interested persons have had ample opportunity to comment on the permit, that the permit issuance was exempt from the APA, pursuant to Government Code section 11352.

163. **Comment:** The Draft Permit fails to Provide a "Safe Harbor" provision for the Permittees. Comment also recommends language changes to provide such Safe Harbor and protect the Permittees from unwarranted third party suits.

Response: Provisions such as those suggested by the Commenter have previously been determined by the SWRCB to be acceptable. (See Order WQ 98-01) However, they were never, as the Commenter concedes, mandatory or required. In fact, in WQ 99-05, which amended WQ 98-01, the SWRCB prescribed the precise language that it directed be used by Regional Boards in the Receiving Water Limitations provision. Nowhere in that language does the "safe harbor" language appear. The Comment is a reiteration of an issue raised several times before to the regional boards and the SWRCB in several years of development of appropriate municipal stormwater permits by the regional boards and the SWRCB. The debate over the issue has included comment by environmental groups, municipal dischargers, industry representatives and the U.S. EPA.

The disadvantage of such provisions is that they have the effect of restricting the Regional Board's proper exercise of enforcement authority. The SWRCB's decision not to include the suggested language in its Order WQ 99-5 represents a deliberate effort to provide explicit guidance regarding this issue. Very recently, in its Order WQ 2001-15, regarding review of the San Diego's Regional Board's MS4 permit for part of Orange County, the SWRCB signaled yet again that the precise language prescribed in Order WQ 99-05 – no more and no less – is that which should be included in MS4 permit Receiving Water Language. There, following extensive analysis relating to the continued appropriateness of the language set forth in 99-05, the SWRCB, although it had a clear opportunity to do so, made no changes to the language such as that proposed by the commenter. It is also important to point out that the MS4 permit for part of Orange County adopted by the San Diego Regional Board does not contain such a provision. Nor does the current draft of the MS4 permit for Los Angeles County being considered by the Los Angeles Regional Board.

D. COMMENTS FROM RANCHO CUCAMONGA AND UPLAND (DATED MARCH 15, 2002)

164. **Comment:** Findings, Page 7, footnote 3. The proposed definition of Maximum Extent Practicable should be revised as follows:…….

Response: The proposed definition does not clarify the term anymore than the existing definition.

165. **Comment:** Finding 18-Pages 6-7. Delete "It is expected that once TMDLs and an implementation plan are developed, the stakeholders will cooperate and implement the plan." Replace with "Once the TMDL is approved by USEPA, this permit may be reopened to determine appropriate implementation measures."

Response: Please see the changes to this section of the draft. Proposed additional sentence need not be added as reopener provisions for TMDLs are already in Section XIX, Permit Expiration and Renewal.

166. **Comment:** Section III.3 – Discharge Limitations/Prohibitions – Page 17. Prohibiting discharges into an MS4 is beyond the Regional Board's authority. This section should be revised to omit the reference to "into the MS4".

Response: This provision requires the permittees to effectively prohibit the discharge of non-storm water to MS4 systems as required under 40 CFR 122.26(d)(2).

167. **Comment:** Section III - Discharge Limitations/Prohibitions – Page 17. This section should also include exemptions for "sidewalk rinsing," dewatering of lakes and decorative fountains," and "discharges originating from federal, state or other facilities which the Permittee does not have the jurisdiction to regulate."

Response: The discharge of rinsate from the cleaning of sidewalks associated with municipal, commercial and industrial areas, as well as, food service areas is strictly prohibited by the proposed permit (Section VI.6.e). Because of chemicals used to minimize biological activity in fountains and the high nutrient and pathogen concentrations in urban lakes, it is unlikely that these waters would be sufficiently low in pollutants to allow discharge to the local storm drain system. Finally, discharges from federal, state or other facilities which the permittees do not have jurisdiction to regulate are already exempted from the proposed permit. Please refer to Fact Sheet, Section IV, and Order, Finding 24, and Attachment 3.

168. **Comment:** Section III. Discharge Limitations – Page 18. The proposed Discharge Prohibitions omit an important exception which is "Discharges originating from federal, state or other facilities which the Permittee is pre-empted from regulating." This provision which has been approved by the State Board, should be included in the new Permit.

Response: Please refer to response to comments, Item 167, above.

169. **Comment:** Section III – Discharge Limitations/Prohibitions – Page 18. The Regional Board should add the following language Section III.0, "Compliance with this Order through the timely development and implementation of programs described herein shall constitute compliance with this prohibition." This provision which has been approved by the State Board, should be included in the new Permit.

Response: Please refer to response to comments, Item 163, above

170. **Comment:** Section IV – Receiving Water Limitations – page 20. At the end of this section, the following provision should be included:
Timely development and complete implementation of the DAMP and other requirements of this order shall satisfy the requirements of this section and constitute compliance with Receiving Water Limitations."

Response: Please refer to response to comments, Item 163, above.

171. **Comment:** Section VI.5(c) ,(d), (e), (h) and (I) – Legal Authority/Enforcement – Page 21. The inclusion of "etc." at the end of these sections is inappropriate for a formal document such as an NPDES permit and should be deleted.

Response: The language has been revised.

172. **Comment:** Section VI.6 – Legal Authority/Enforcement – Page 21. The Cities are concerned about the feasibility and enforceability of the new program for restaurant inspections which go far beyond the scope of the provisions of 40 CFR 122.26(d)(2)(iv)

Response: We disagree; this requirement is consistent with the MEP standard established for the MS4 discharges. Also, please note that 40 CFR 122.26(d)(2)(iv)(B) requires the permittees to detect and remove illicit discharges and improper disposals into the storm sewer.

173. **Comment:** Section VII.1 – Illegal Discharges/Illicit Connections – Page 22. The Cities are concerned that this provision is overbroad and should only require the "effective prohibition" of "illicit discharges."

Furthermore, the directive that illegal or illicit connections "shall be investigated and eliminated within 60 days of discovery and identification," appears to require a Permittee to actually eliminate such a connection itself, rather than direct or order the elimination of the connection by the responsible party.

Response: Please refer to the revised language. Please note that the r equirement itself is consistent with 40 CFR 122.26(d)(2).

174. **Comment:** Section VII.2 – Illegal Discharges/Illicit Connections – Page 22. Substitute "hazardous substances" with hazardous materials which is a defined term in the Permit (see, page 52 of Attachment 4). We also believe that the imposition of these additional reporting obligations is infeasible and not authorized by exiting law.

Response: For purposes of spill response and reportable quantities, reference to hazardous substances is appropriate. See Section 311 of the Federal Water Pollution

Control Act and Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

175. **Comment:** Section VIII – Municipal Inspections of Construction Sites – Page 23. The Cities question the legality and practicability of the inspection program proposed by the Regional Board in the Permit. Specifically the cities we represent do not have the resources available to implement these additional inspection programs. Futhermore, many of the requirements of this provision may duplicate those found in the Statewide General Construction Permit which are already regulated by, and the responsibility of the Regional Board. If the Permit is adopted in April, it will not be feasible for the wet season inspections in Section VIII.3 to be conducted prior to May 31, 2002. The Cities recommend that the wet season inspections commence during the 2002-2003 wet season. Other concerns regarding deadline for inventory of constrcution sites, frequency of inspections and limited resources, and the ability for the cities to use limited resources to those sites which pose the greatest threat to water quality.

Response: Federal regulations require the permittees to control the discharge of pollutants from industrial, including construction sites. 40 CFR 122.26(d)(2)(i) states that the permittees must demonstrate that they have adequate legal authority to control "the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity," prohibit "illicit discharges to the municipal storm sewer," control "the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water," and "carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer." Please note that implementation and enforcement of the State's General Permits will continue to be the responsibility of the Regional Board. However, at a number of these sites, the daily changes in site conditions and practices and the potential for discharges from these sites to cause or contribute to exceedances of water quality objectives require this extra level of local inspection and enforcement.

With respect to lack of resources to implement the additional inspection provisions, we encourage the permittees to look into the cost saving and efficiencies in using existing inspection programs. The permit offers the cities the ability to prioritize these sites based on threat to water quality, and therefore utilize limited resources in a way that will result in maximum benefit.

Please refer to the revised schedules.

176. **Comment:** Section IX – Municipal Inspections of Industrial Facilities – pages 24-25. The new requirements for inspections of industrial facilities are overly prescriptive and

duplicative of those found in the Statewide General Industrial Permit, and exceed the inspection requirements prescribed by the Clean Water Act. Furthermore, the federal storm water regulations do not require Permittees to inspect all industrial and commercial facilities, or construction sites and the California Water Code does not authorize the Regional Board to require the Permittees to carry out this burdensome and inefficient process. The Permittees should be afforded the flexibility to develop and implement their own inspection program to identify problem facilities and report them to the Regional Board.

Additionally, the requirement that the Permittees provide training by July 1, 2003 may also be infeasible due to the limited financial resources of our cities.

Response: Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) provides that each permittee must demonstrate that it can control "through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity." These ordinances must be applied at all industrial sites to ensure that pollutant discharges to the MS4 are reduced to the maximum extent practicable and permit requirements are met. Furthermore, 40 CFR 122.26(d)(2)(iv)(C)(1) requires that municipalities "identify priorities and procedures for inspections and establishing and implementing control measures…" for discharges from industrial sites that the municipality determines are contributing a substantial pollutant load to the MS4. Regarding enforcement at industrial sites, the US EPA further states, "The municipality, as a permittee, is responsible for compliance with its permit and must have authority to implement the conditions in its permit. To comply with its permit, a municipality must have the authority to hold dischargers accountable for their contributions to separate storm sewers" (1992). Regional Board staff will work with the permittees to avoid duplicative efforts at industrial facilities regulated by the State.

We suggest coordination of the training programs with other permittees to take advantage of shared costs and resources. The annual reports from prior years indicate that most of the permittees have a well established program in place (e.g., Upland reported that 100%, and Rancho Cucamonga 31% of the facilities have been inspected). Considering this factor, we feel that the proposed schedules are reasonable.

177. **Comment:** Section X – Municipal Inspections of Commercial Facilities – page 26 and 27. The reporting obligations are infeasible and not authorized by existing law. California and federal statutes clearly impose reporting obligations on the polluter, not cities.

Response: The draft order requires the permittees to notify all spills and leaks that may pose an immediate threat to human health or the environment. This is critical to protect public health and the environment. Please note that the other reporting

requirements are necessary to determine compliance with the MS4 permit, including the MEP standards.

178. **Comment:** Section XII – New Development (Including Significant Redevelopment) – page 29. The Draft Permit is placing the emphasis on land use rather than simply requiring the Permittees to reduce the discharge of pollutants to the MS4 to the maximum extent practicable.

Response: Urbanization and pollutant discharge have a cause and effect relationship. Urbanization without consideration of environmental impacts will be a violation of the California Environmental Quality Act (Public Resources /Code Section 21000(g)). The federal storm water regulations at 40 CFR 122.26(d)(2)(iv)(A)(2) also require the permittees to consider storm water issues in the comprehensive planning process. For an effective program, environmental impacts must be considered and control measures must be identified in the planning stages.

179. **Comment:** Section XII.A.1 – A.2 – New Development (Including Significant Redevelopment) – Page 29. With the delay of the hearing for this Permit, the target date of July 1, 2002 is not reasonable. The Cities recommend that these tasks be completed within 365 days from the date of adoption of the new Permit.

Response: Most of the permittees are already implementing this requirement. However, the date has been revised to provide adequate time from the date of adoption of this order for the permittees to review and determine the adequacy of the current program.

180. **Comment:** Section XII.A.6 – New Development (Including Significant Redevelopment) – Pages 30 and 31. The Regional Board does not have the legal authority to review or approve proposed updates or amendments to General Plans and the Permittees should be provided the flexibility.

Response: The draft order requires the permittees to review their planning procedures and CEQA document preparation processes to ensure that storm water-related issues are properly considered and addressed. The permittees have the flexibility to propose their own programs to address storm water-related issues. As indicated above (Comment # 178), for an effective storm water program, environmental issues must be considered in the planning stages of all projects. Because land use planning and zoning are where urban development is conceived, it is the phase to identify cost-effective control measures. Government Code Section 65350 et seq., require public notification of amendments and changes to the General Plan. The permit requires that a copy of those amendments or changes be submitted to the SARWQCB.

181. **Comment:** Section XII.B(3) – New Development (Including Significant Redevelopment) – Page 32 – The WQMP should not be based on, or require the same categories as the SUSMP. The Permittees should not be required to implement the structural BMPs found in the SUSMP as they were not developed with the regional considerations of San Bernardino County and are not flexible or site-specific. (See 64 Fed. Reg. At 68722 where EPA has not proposed a stringent definition for MEP, but instead promotes "maximum flexibility" in MS4 permitting.) SUSMPs are not the only way for the Permittees to satisfy the requirement of the CWA which requires MS4 applicants to propose a management program to "develop, implement, and enforce controls to reduce the discharge of pollutants from MS4s which receive discharges from areas of new development and significant redevelopment." 40 CFR 122.26(d)(2)(iv)(A)(2).

Response: The draft Order provides flexibility to the permittees to develop regional water quality management plans. The Order also provides some standards that must be met in developing these water quality management plans. These standards, as specified in the draft Order, are considered as MEP standards (please refer to the Memo from the State Board's Chief Counsel dated December 26, 2000 and State Board Order No. WQ 2000-11)

182. **Comment:** Section XII.B(3) – New Development (Including Significant Redevelopment) – Page 32. We believe that the Regional Board has limited authority to prescribe BMPs to incorporate specific design criteria as to how MEP is to be achieved. While the Regional Board is the permitting agency, its authority is limited and the Permittees have broad discretion under Section 13360(a) of the California Water Code to "comply with the order in any lawful manner."

Response: The draft order specifies a design criteria for a specific kind of structural BMP. However, the order also provides options for other alternatives. The draft MS4 permit does not violate the restriction in Water Code section 13360 on the Regional Board identifying the "design" or "particular manner" in which a permittee shall comply with the permit. Water Code section 13360 restricts the Regional Board from specifying the manner of compliance with the permit. Specifically, the Regional Board may not specify the "design" or "particular manner in which compliance may be had." (Water Code, Section 13360.) At the same time, Water Code section 13377 provides that, notwithstanding section 13360, the Regional Board shall issue waste discharge requirements "which apply and ensure compliance with all applicable provisions of the [Clean Water Act]."

D. RESPONSE TO COMMENTS ON THE COMMENTS FROM THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT (DATED MARCH 14, 2002):

183. **Comment:** Finding 2. Reference to the "San Bernardino Transportation/Flood Control Department" should be changed to the "San Bernardino County Flood Control District." The San Bernardino County Flood Control District is the Principal Permittee.

Response: Language changed.

184. **Comment:** Finding 3. Reference to the "San Bernardino County Department of Public Works" should be changed to the "San Bernardino County Flood Control District." The San Bernardino County Flood Control District is the Principal Permittee.

Response: Language changed.

185. **Comment:** Finding 12. Revise footnote to clarify that runoff from National Forests is not urban runoff. Add "National Forests" and "state and federal properties" to the examples of where the permittees may lack legal jurisdiction. This makes it clear that the lack of jurisdiction extends beyond facilities.

Response: The state and federal facilities referenced in this finding includes national forests and other state and federal properties.

186. **Comment:** Finding 14. It should be clarified that a major portion of the San Bernardino County in the Santa Ana River Basin area is being urbanized. Most of San Bernardino County remains (in the Lahontan and Colorado Region) unurbanized and will remain so for years to come.

Response: Clarification made as recommended.

187. **Comment:** Finding 20. Footnote 3 is inconsistent with the definition of MEP in Attachment 4 to the permit. Footnote 3 is more consistent with the definition of MEP than the lengthy discussion in Attachment 4.

Response: MEP definition in Attachment 4 has been changed to be consistent with the footnote.

188. **Comment:** Finding 24. It should be clarified that if any agency listed in Attachment 3 is determined to cause or to contribute to violations of this order, then the RWQCB will require them to 1) secure an NPDES permit or 2) become a permittee under this permit if acceptable to the existing permittees and subject to execution of the implementation agreement.

Response: Existing language has been further clarified.

189. **Comment:** Section I. Responsibilities of the Principal Permittee

- This section should be revised to clearly distinguish the responsibilities of the Principal Permittee when 1) acting on behalf of the area-wide program and 2) when acting as the SBCFCD. Item numbers 2, 5, 6, 7, 12, 18 pertain to the principal permittee when acting as the SBCFCD. The remaining items pertain to the principal permittee when managing the overall storm water program.

- The following language should be added, "In addition, the activities of the principal permittee shall, at a minimum, include the following for MS4 systems owned and operated by the SBCFCD:"

  Response: Please refer to the changes in the March 22, 2002 draft.

190. **Comment:** Section I.12. The word, "physical", should be deleted as it is overly suggestive of manual removal by public agency forces as opposed to removal via enforcement authority. Please see comments II.11 regarding the word "ensure".

  Response: Please refer to the revised language.

191. **Comment:** Section II.2 Responsibilities of the Co-permittees
The July 1, 2002 deadline should be extended for the co-permittees to evaluate their ordinances regarding administrative fines. The deadline for adoption of ordinances, which provide the co-permittees the ability to impose and collect fines administratively, should also be established. Suggested deadlines: July 1, 2003 for evaluation of ordinances and July 1, 2004 for effective date of new ordinances.

  Response: Deadline for ordinances to be in place has been adjusted to provide adequate lead time from permit adoption date.

192. **Comment:** Section II.6. Clarification should be made that the notification for changes in a co-permittee's designated representative to the Management Committee must be made in writing to the principal permittee.

  Response: Clarification made as recommended.

193. **Comment:** Section II.11 (Typical comment, applies throughout permit). The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. For example, the co-permittees can "prohibit" illegal discharges through ordinances and they can take appropriate "enforcement actions" against violators, but they cannot "ensure" that illegal discharges do not occur. Permit Item VI.2 spells out appropriate actions for the co-permittees. This issue here is similar to the posting of speed limits and enforcement of posted speeds. Some recalcitrant drivers will speed and can be ticketed, fined, and in rare instances, jailed for

violations of posted speeds, but short of taking control of vehicles, the police can not "ensure" that drivers don't exceed the speed limit.

Response: Please refer to the revised language.

194. **Comment:** The word, "physical", should be deleted as it is overly suggestive of manual removal by public agency forces as opposed to removal via enforcement authority.

Response: Please refer to the revised language.

195. **Comment:** Section III. 3 Discharge Limitations/Prohibitions
The following exemption should be added: "Discharges from BMPs implemented in accordance with this permit or an approved WQMP."

Response: It is anticipated that discharges referenced here are storm water containing no significant amount of pollutants. Please note that the proposed Order regulates urban storm water runoff and an exemption is not needed under this permit for the discharge of storm water.

196. **Comment:** Section IV. Receiving Water Limitations
The language is not word-for-word the same as specified in Order No. WQ 99-05, which was the negotiated language. Even though there are very minor changes, these changes do alter the intent of the negotiated language.

Response: Additional language is provided for clarification and does not modify the intent of the negotiated language or the legal effect of the negotiated language.

197. **Comment:** Section IV.2. The acceptable description of a process for compliance with receiving water limitations or violations of the order is the description included in the negotiated language of Order No. WQ 99-05. The recently inserted language is suggestive of an "iterative process" outside that anticipated Order No. WQ 99-05. Therefore, the new language should be deleted and the State Board's language in Order No. 99-05 should be used.

Response: The iterative process included the draft Order only clarifies the process described in State Board Order No. WQ 99-05 and is consistent with Order No. 2001-15.

198. **Comment:** Section IV.3. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised terminologies.

199. **Comment:** Section V. Implementation Agreement: The deadline for annual Implementation Agreement evaluations should be revised to July 1, 2002, so that the evaluation is accomplished on a fiscal year basis and duly reported in the Annual Report.

Response: Language changed as recommended.

200. **Comment:** Section VI.3 Legal Authority/Enforcement:: The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised terms.

201. **Comment:** Section VI.5. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

202. **Comment:** Section VI.5e. This listing suggests that the permittees will need to prohibit or develop BMP programs to control the washing of residential streets, sidewalks, driveways, and patios. This will not only be problematic, but impossible to enforce. However, in commercial and industrial areas, controls for these activities are appropriate.

Response: Comment noted.

203. **Comment:** Section VI.5.e. Later part of the sentence structure is confusing. It is not clear what this provision is addressing. Is it addressing the use of chemicals to wash the specified areas or is it focused on requirements for the washing of areas containing chemicals?

Response: The discharges from these types of washing operations should not contain chemicals that could have an adverse impact on water quality. If a chemical is used in the washing operations, or if chemicals are washed off (from a spill, leak, etc.) from the surface, the wash water should not be discharged to the storm drains.

204. **Comment:** Section VI.6. The deadline for development of the restaurant inspection program is too soon. Suggested deadlines: July 1, 2003 for development of the restaurant inspection project.

Response: Please see the revised schedules.

205. **Comment:** Section VII. Illegal Discharge/Illicit Connections; Litter, Debris and Trash Control: The language in this section needs to be tightened up. The terms "trash" and "litter" adequately describe the anthropogenic materials that this item should appropriately target. The introduction of the term "debris" is unclear and should be deleted as "debris" is commonly used to refer to materials that wash down from forest areas naturally and following wildfires, materials that naturally replenish stream sediment loads and balance stream erosion. As such, "debris" includes primarily non-anthropogenic materials.

Response: Debris has been defined in Attachment 4. Although the term could refer to non-anthropogenic materials, it is also used for materials originating from human activities. For purposes of water quality protection, the sources of debris whether anthropogenic or not is of less importance; how the debris is managed is the critical factor.

206. **Comment:** Section VIII.1 Municipal Inspections of Construction Sites
The date to develop the inventory of construction sites is too soon. Suggested deadlines: July 1, 2003 for development of the construction database system and September 1, 2003 to begin populating the database. Updates, by fiscal year, can then be reported in the Annual Report.

Response: The annual reports from prior years indicate that most of the permittees already have an inventory of construction sites. Some changes have been made to the deadline to provide adequate time for all permittees to comply with this requirement.

207. **Comment:** Section VIII.3.a. The reference to the 2001-2002 wet season should be deleted and replaced with the 2002-2003 wet season.

Response: Language changed as recommended.

208. **Comment:** Section VIII.3.b. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

209. **Comment:** VIII.6. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11. The deadline for training staff is too soon given the expanded

extent of the training. Suggested deadline: September 1, 2003 for training construction inspection staff.

Response: Please refer to the revised language. The deadline for training construction inspection staff has been changed to require completion prior to start of inspection of prioritized sites and a the same time meet the ROWD commitment of holding refresher MAPPS training once per year.

210. **Comment:** IX.9 Municipal Inspections of Industrial Facilities
The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

211. **Comment:** Section XII. New Development (Including Significant Re-DevelopmentXII.A.4). The word "existing" from the phrase "runoff from new and existing industrial sites" should be deleted, since this section deals with new development.
Response: Deleted as recommended.

212. **Comments:** Section XII.A.7. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

213. **Comment:** Section XII.A.10. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

214. **Comment:** Section XII.B.1.d. Clarification for status of Retail Gasoline Outlets should be made, especially those that sell fuel and conduct vehicle testing and repair.

Response: These are covered under the Section X.B.1.c for industrial/commercial developments 100,000 square feet or more. Facilities smaller than this should be required to comply with the routine structural and non-structural BMPs specified in the New Development Guidelines or other requirements developed by the permittees.

215. **Comment:** Section XII.B.3.a. The "24-hour storm" does not make sense hydrologically. Storms have durations of varying length, from a few minutes to hours to multiple days. In Option 2 – the URQM procedure is not based on the fictitious "24-hour storm," but rather a continuous simulation model. Therefore, it is suggested that reference to the "24-hour storm" be dropped, and go with the 85th percentile event in Option 1 (24-hour interval period could be specified). Option 4 is a confusing restatement of Option 1 and therefore it should be deleted.

Response: We agree that the storm events have varying duration. The term "24-hour storm" is a widely used terminology to denote the storm intensity during a 24-hour period. Please note that the Los Angeles SUSMP requirements which contained this requirement was upheld on appeal by the State Board. See State Board Order No. WQ 2000-11.

216. **Comment:** Section XII.B.3.b. Option 3 is a confusing restatement of Option 2 and therefore it should be deleted.

Response: These requirements are different and the references included here should provide additional clarification.

217. **Comment:** Section XIII.1 Public Education and Outreach
The deadline for public awareness survey is too early. It should be extended to July 1, 2003.

Response: Please see the revised schedules.

218. **Comment:** Section XIII.6 This item should be deleted and replaced with the following: "By September 1, 2003, the permittees shall complete an evaluation of business education and outreach methods suitable for assisting with implementation of programs required by this permit."

Response: The language in the proposed Order requires the permittees to determine the best method for distributing educational and General Industrial Permit materials to businesses within their jurisdiction. The requested changes do not accomplish the same task.

219. **Comment:** Section XIV.1 Municipal Facilities/Activities
The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

220. **Comment:** Section XIV.3. The deadline for this item should be extended to July 1, 2003. This item requires the cooperation of an organization that is not a permittee under this permit, and as such, is overly restrictive. The item should be deleted as the permit already has sufficient language regarding non-storm water discharges.

Response: Please see the new schedules. This requirement specifically deals with discharges from fire-fighting and is not addressed elsewhere.

221. **Comment:** Section XIV.4. The deadline for this item should be extended to July 1, 2003. The reference to the annual report should be changed to 2002-2003 annual report.

Response: Please see the revised deadlines.

222. **Comment:** Section XIV.11. The listing of agency organizations is confusing, as there is similar language in Finding 24 and Attachment 3. This item must be written clearly to distinguish between departments, divisions, and bureaus within a permittee's agency (clearly these are covered by the permit and language to emphasize said fact is appreciated) and agency organizations that are not permittees, such as those listed in Attachment 3. The permittees have little, if any, control over non-permittee public agencies and organizations. Please clarify that if any agency listed in Attachment 3 is determined to cause or to contribute to violations of this order, then the RWQCB will require them to 1) secure an NPDES permit or 2) become a permittee under this permit if acceptable to the existing permittees and subject to execution of the implementation agreement. Also, the Transportation Department is now a part of Department of Public Works in the organizational chart for San Bernardino County.

Response: This item refers to coordination with various departments within a permittee's jurisdiction and intergovernmental (between cities, City and the County, etc.) coordination. These kind of coordination and cooperation are needed to have an integrated storm water program. This may be one way to reduce program costs by avoiding duplicative efforts. Impact on the regulated community will also be minimized if the same inspectors that already conduct construction, industrial or restaurant site inspections also evaluate compliance with storm water ordinances.

223. **Comment:** Item XVI. Program Management
The evaluation of the MSWMP should be revised to be included in the annual report each year.

Response: Language revised as recommended.

224. **Comment:** Item XVII. Fiscal Resources
The "November 15" date should be deleted and revised to state that the fiscal analysis shall be included in the annual report each year.

Response: Please refer to the revised language.

225. **Comment:** XVIII.1 Provisions: This item speaks to public notices that will be placed by the Regional Board. As such, it is understood that this item is included for permittee informational purposes only.

Response: Noted.

226. **Comment:** Section XVIII.4. The last sentence, "In addition to those specific controls…by this Order", should be deleted. This sentence contradicts and is redundant with the provisions in IV - Receiving Water Limitations.

Response: This was added at the request of the California Department of Health Services and the local vector control agencies.

227. **Comment:** Section XIX.1 Permit Expiration and Renewal
The expiration date should be revised to be consistent with the date five years following adoption of the order.

Response: Expiration date revised to April 27, 2007.

228. **Comment:** Map of Permit Area
The map should be drawn to also show exclusion of National Forest from within the permitted area.

Response: No change necessary; please note that this is a map of the whole drainage area.

229. Comment: Attachment 3
See the comment on Finding 24.

Response: A footnote has been added to reflect the relationship of this list with Finding 24.

230. **Comment:** Attachment 4 There is no reference made to Attachment 4 in the text of the permit.

Response: Attachment 4 is a glossary of the terms used.

231. **Comment:** Definition of MEP. The emphasis on "technical feasibility" in the definition by Jennings is inappropriate, as it is not supported by CWA. Other items are important, including pollutant removal effectiveness, safety, and costs. MEP is a balancing act, and the artificial insertion of special emphasis outside of sound backing from the CWA is

inappropriate. Reference to the Jennings definition should be deleted. Also, see comment for Finding 20.

Response: MEP definition in Attachment 3 has been revised to be consistent with the footnote referenced in the finding.